

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING/HEARING

+ + + + +

TUESDAY,

JUNE 16, 2015

The Board met at 9:30 a.m., pursuant to notice, in the Jerrily R. Kress Memorial Hearing Room, 220 South, 441 Judiciary Square, Washington, D.C., Lloyd J. Jordan, Chairperson, presiding.

BOARD MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
MARNIQUE Y. HEATH, Vice Chairperson
JEFFREY HINKLE, Board Member

ZONING COMMISSION MEMBER(S) PRESENT:

ROBERT E. MILLER
MARCIE I. COHEN

BZA STAFF PRESENT:

CLIFFORD W. MOY, Secretary to the Board

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.
LAWRENCE FERRIS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
ELISA VITALE
BRANDICE ELLIOTT

DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

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AGENDA ITEM

CALL TO ORDER, Lloyd J. Jordan 5

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P-R-O-C-E-E-D-I-N-G-S

(9:42 a.m.)

CHAIRMAN JORDAN: Could we please come to order. Good morning. We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street., Northwest, and we're here for the meeting of the Board of Zoning Adjustment of the District of Columbia. Hearings and Meeting.

My name is Lloyd Jordan, Chairperson. To my right is Jeffrey Hinkle, member of the Board, to my left is Vice Chair Marnique Heath and to the left Rob Miller, member of the Zoning Commission sitting in for part of today's docket as a member of the Board of Zoning Adjustment.

Please be advised that today's proceedings are being webcast live and also being recorded by a court reporter, so therefore I'm going to ask you to refrain from any disruptive noises here in the room.

It's a good time now to make sure that you silence any device that might ring or buzz loudly.

If you're going to provide any testimony or address the Board in any manner today I'm going to need you to do two things, the first of which is to complete two witness cards per person and prior to testifying give those cards to the court reporter seated to my right. So if you're going to provide any statement or address the Board in any manner, we're going to need you to complete two witness cards per person and give them

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1 to the court reporter prior to you taking a seat at this table.

2 The second thing I'm going to need you to do is to now
3 stand and take the oath which will be given by Mr. Moy,
4 Secretary to the Board.

5 (WITNESSES SWORN)

6 CHAIRMAN JORDAN: Okay. We're going to be taking some
7 things out of order because, as I said, we have certain members
8 of the Zoning Commission who will be seated with us today and
9 have different cases on the docket that are either continuing
10 or etc. And then some cases are more ripe for moving forward
11 than others. But Mr. Moy, are there any announcements we need
12 to make?

13 SECRETARY MOY: Yes. Very quickly, Mr. Chairman, and
14 thanks for reminding me. This is for the record regarding cases
15 on the docket. The following cases are as follows:
16 Application No. 18998, this is the application of Saint Sophia
17 Greek Orthodox Cathedral has been withdrawn.

18 Application No. 19018, this the application of North
19 Capitol #2 Land trust. It was referred by the applicant and
20 been rescheduled to June 23, 2015, and finally application No.
21 19011. This is the application of Gabriel LLC deferred at the
22 request of the applicant and rescheduled to July 14, 2015.
23 Thank you, sir.

24 CHAIRMAN JORDAN: All right. Let's take our medicine,
25 swallow it quickly. Let's do 18114, one that's been back and

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1 forth between here and the Court of Appeals for maybe what
2 three, four years which is back to be with us again. So let's
3 go ahead and move that one. I think this will save us about
4 an hour on the docket. Do you want to call it?

5 SECRETARY MOY: Yes sir, thank you. This is the remand
6 of Appeal No. 18114-A of Ward 5 Improvement Association. This
7 was remanded back to the Board as you said, Mr. Chairman, August
8 of 2014. And this is before the Board.

9 CHAIRMAN JORDAN: All right. Well, we've been called
10 upon to answer some questions or do further work as instructed
11 by the Court of Appeals, D.C. Court of Appeals. This case
12 involves an operation called the Stadium Club which has been
13 alleged to be a sexually oriented establishment under the
14 zoning regulations and there was an appeal filed on the actions
15 of the zoning administrator to allow the club and exception
16 since it's been around for a long time. So we're going to handle
17 those issues raised.

18 I would recommend to the Board that we address this
19 matter by answering those questions which counsel has pulled
20 out that we need to respond to from the Court of Appeals so
21 there's some other thought about how we address that. And I
22 think if we stick to these questions we very well may answer
23 any other thing that's out there. Does that make sense?

24 All right. So the first question that it appears that
25 we need to address is what information was available to the

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1 Zoning Administrator at the time of the issuance of the second
2 permanent certificate of occupancy June 24, 2011.

3 I contend that the record's probably pretty full on
4 that, both from the briefs that have been applied to the Court
5 of Appeals, that the full record was generally available at
6 the time that the ZA made his decision. Excuse me a second.

7 I'm asking that counsel come close because these things,
8 as I've learned, every word can come back to bite you.

9 So I would offer that as our first finding and I would
10 move that that be our first finding.

11 BOARD MEMBER HINKLE: I'll second that.

12 CHAIRMAN JORDAN: The motion being second on readiness.
13 Discussion?

14 COMMISSIONER MILLER: Mr. Chairman, I would agree, and
15 I think the parties agree, that there is sufficient information
16 to make a determination. I would note that I was struck by
17 the fact that there were all these video cameras in this-- there
18 are 32 or 36 video cameras and I'm just struck by the fact that
19 the ZA never asked to look at it. This Board never asked to
20 look it and we're not asking to look at it now. And there might
21 have been some information there that might have helped confirm
22 the other information that is in the record. But I agree that
23 there is sufficient information.

24 CHAIRMAN JORDAN: Well, I've just been advised by
25 counsel we don't need to vote on each and every one unless we

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1 have some disagreement and I appreciate that. So that would
2 be my consensus, our response back to that.

3 No. 2 how should the Board define key terms in a
4 regulation listing specific sexual activities, particularly
5 fondling, or other erotic touching of human genitals, public
6 regions, buttocks and breast and acts of sexual stimulation
7 or arousal considering both the ZA's interpretation and that
8 the words are not defined in the Zoning Regulation shall have
9 the meaning given in Webster's Dictionary. That's a mouthful.

10 Well on that, first I think on the issues that give some
11 concern is that people try to use the California Steakhouse
12 case for this case, I think there are some aspects of that case
13 which are applicable. However, at the California Steakhouse,
14 as you know, the definition under 199 changed and the
15 definition added some conjunctive language instead of some
16 optional kind of review here. And so I think that when we look
17 at the answer to this question, I think we have to use that
18 type of definition for the one that requires the specific
19 sexual act focusing on performance behavior and the nude
20 dancing acts alone would be insufficient.

21 It has to be coupled with the other aspect of the
22 regulation, the specific sexual activity has to be combined
23 with the fondling or erotic touching. Somebody else jump in
24 here because I don't have the answers myself. Anybody have
25 a thought about how we answer this question?

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1 VICE CHAIR HEATH: Okay. I think the way you started
2 it, Mr. Chair, makes sense. What I would say is there are two
3 parts to the definition. I think it's clear that the first part
4 of the definition specified anatomical areas is present. We
5 all agree on that.

6 But, as you stated, the difference between what we are
7 trying to decide now and the California Steakhouse is that now
8 we have to adhere to both parts of the definition and if we
9 want to talk about whether or not we feel this case constitutes
10 the specified sexual activities, specifically-- well, I guess
11 we would go down parts (a) and (b) and talk about whether we
12 feel (a) occurs here or whether (b) occurs there and then get
13 into the detail of (b), I think that's probably the way we want
14 to handle it,

15 CHAIRMAN JORDAN: And I agree with that and I also think
16 that maybe we have to at that point in this discussion discuss
17 the aspect of what the standard is. Do you agree with that?
18 The standard as to whether or not this is a reasonable person
19 standard or is it a subjective actor standard. Anybody else
20 have any other thoughts on how we would approach this?

21 So let's address as we go down. Some of the specific
22 sexual activities there was no evidence presented to the Board
23 per se. Acts of human masturbation I don't think was present
24 in any of the facts. Sexual intercourse wasn't present.
25 Sodomy and bestiality, boy this is a crazy regulation, wasn't

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1 present. It makes you a bit uncomfortable doesn't it. Can we
2 just dim the lights and then we can talk--

3 Sexual stimulation and arousal I think really gets into
4 an aspect of where we really need to drill down overall.

5 Here's the problem. This thing has given I guess all
6 of us a headache and not just the District of Columbia and this
7 Board, but this case is all across this country and gone all
8 the way up to the Supreme Court and back, both state Supreme
9 Courts, the U.S. Supreme Court, over and again on this issue
10 of sex, sexual activity. What's art, what's not art? How you
11 judge it. It is at a reasonable person standard? Is it a
12 subjective standard? And so that's kind of what we're
13 confronted with as we sit here until the Zoning Commission
14 comes back and changes the regulation and get it off our back.

15 But the other part of it is that there needs to be some
16 aspect of predictability so that it can be properly enforced.
17 Right? Is that the real hard part about that. So to provide
18 the public notice and any establishment owner proper notice
19 that they know some type of bounds.

20 So this is one which has been punted to the BZA to deal
21 with. So I think we do have to attach either, you know, some
22 type of standard, whether or not it's how do we know there's
23 some sexual arousing or sexual stimulant? Do we look at the
24 eye of the receiver? Do we look in the eye of the person who's
25 doing this act? Is their intent that someone gets sexually

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1 aroused or whatever? And I'm going to shut up because, you
2 know, I don't have the answer to this. It's serious but it's
3 really, you know, it a serious question. Anybody want to weigh
4 in on any of that?

5 I do believe that when we considered this, in all
6 honesty, when we went through this the first time there was
7 a lot of discussion by this Board in examining the evidence
8 and we took in the witnesses who testified in front of the Board
9 and their affidavits and etc., and to a person in this room
10 those even that were paid by the appellant said that they did
11 not find the activity although they might have what they
12 considered something was fondling or etc., etc., they didn't
13 find it sexually stimulating.

14 What does that do? Well, if you hear enough of it from
15 people saying they didn't find it was sexually stimulating you
16 could say well then to a reasonable person it's not sexually
17 stimulating, or again you can focus on that individual.

18 But when you're using a standard of a reasonable person,
19 we have to be again very careful because if you go to what may
20 be -- if you look at reasonable in light of the majority might
21 think, it gets to be kind of questionable also.

22 Like in art work I remember a situation where one of the
23 cities I was administrator in had spent \$5 million dollars for
24 a blind piece of art work, \$5 million dollars, it was going
25 to be the centerpiece of the city. And when they unveiled it,

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1 I was going what kind of crap is this? And half the people
2 probably said what kind of crap is this? It actually was five
3 steel beams in the middle of the ground rusting.

4 And people were all over the place and the mayor was
5 getting beat up about getting the money back. You ought to
6 sue this person and, you know, this is crazy, they took our
7 money and ran with it.

8 But there was a great number of other folks, not more
9 than what I would the majority but a good substantial minority,
10 said it's fabulous. And they were willing to pay the city the
11 money to keep it in the ground and not return it and get rid
12 of it. So you see it's kind of-- especially when you talk about
13 things that begin to borderline 1st amendment and all that kind
14 of stuff. So I've talked enough. Come on, jump in on.
15 Anybody. The water's fine. Mr. Miller?

16 COMMISSIONER MILLER: I'll jump in, Mr. Chairman.
17 So I agree that we have to find that there was specified sexual
18 activities and that has to include both acts of human
19 masturbation, sexual intercourse, sexual stimulation or
20 arousal or sodomy or bestiality on the one hand and we're
21 focusing on the sexual stimulation or arousal because there
22 was not evidence of sodomy, bestiality, sexual intercourse.

23 I would note though on the masturbation where was the
24 one affidavit of a lap dance which I think could fall into the
25 category of masturbation, but I think that we don't have to

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1 really go there because I think the focus, as it was in the
2 California Steakhouse case, was sexual stimulation or arousal
3 for that part of the test of specified sexual activities.

4 And then you go to the fondling or other-- we also have
5 to find, like in California Steakhouse, we have to find the
6 other part as well, fondling or other erotic touching of human
7 genitals, the pubic region, buttock or breast.

8 So on the sexual stimulation or arousal part, I think
9 the California Steakhouse standard of saying that that's based
10 on whether the quote "the positions assumed by the women and
11 the manner in which the women display themselves are clearly
12 designed to stimulate or arouse patrons of the establishment."

13 So I think it is the specific type of nude dancing that
14 is the standard and for me a strip club or, if you want to call
15 it a Gentleman's Club which is what the Stadium Club calls
16 itself in addition to a steakhouse, meets that standard. I
17 think that's what a striptease is designed to do.

18 Not to confuse matters and these aren't defined terms
19 in our Zoning Regulations, a strip club is not a use in our
20 Zoning use category, or Gentleman's Club is not, but I would
21 note that I went to, I hope this wasn't improper, went to
22 Webster's Dictionary which is there the Zoning Regulations say
23 you go if something's not defined, and a strip club is defined
24 in the Webster's learner's version a place where people go to
25 watch performers take their clothes off in a sexually exciting

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1 way. A nightclub with performance by strippers.

2 And then you go to Webster's definition of a Gentleman's
3 Club, a nightclub for men that features scantily clad women
4 dancers or stripteasers.

5 And then you go to striptease and the definition in
6 Merriam's and Webster dictionary says a performance as in a
7 burlesque act in which a person slowly removes clothing usually
8 to musical accompaniment. Striptease, a form of erotic
9 entertainment in which a person gradually undresses to music.

10 I think there is enough evidence in the record, which
11 I didn't sit on the original case but I've read every transcript
12 of every proceeding. I've watched several of them more than
13 once. It was very painful. But I think there's enough
14 evidence in the record that the way that the women were dancing
15 was designed to stimulate in a sexually exciting way.

16 The ZA testified that when he sent out his investigator
17 his quote, one of his many quotes is in the context of their
18 performances, they, the dancers, have a G-string or a garter
19 where patrons on occasion will place bills, dollar bills in
20 the garters. He reported to me that other than that there was
21 no touching of the performers, well that goes into the erotic
22 touching. But I think the dancers are bending over, exposing
23 the specified anatomical areas, their breasts, their genitals,
24 their buttocks. They're bending over in a very provocative way
25 to get the tips that they are trying to earn for a living.

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1 So for me that's enough. That's what a strip club is
2 designed to do as opposed to some other kind of naked dance
3 performance at the Kennedy Center, although I would note if
4 the Kennedy Center on its three stages only showed 365 days
5 a year the performance of Hair, which I saw many decades so
6 and has more than just a storyline about naked dancing and
7 intercourse, it's a big part of the show.

8 But if that's all the Kennedy Center showed on all three
9 stages 365 days a year, I might consider the Kennedy Center
10 a sexually oriented business establishment. But if they only
11 had one or two or three shows of that kind throughout the year,
12 then it's clearly not.

13 Again, and I know there's evidence in the record about
14 the Washington football team's cheerleaders how they're
15 provocative, and if that was all that was shown at Fed Ex Field
16 and there wasn't a football game, 60 minutes of a football game
17 associated with that, if it was just the cheerleaders, yeah,
18 and depending on how much exposure of those anatomical areas
19 and the touching of their own anatomical areas, then yeah might
20 be considered a SOBy if there was no other main event going
21 on, the football game.

22 So I guess I'll stop there. I talked more about the
23 fondling or other erotic touching but I think I've already
24 touched on that.

25 CHAIRMAN JORDAN: If I may, thank you, I appreciate it.

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1 What we're trying to do is box in an answer to the questions
2 and not revisit the whole decision and look to reverse because
3 it hasn't been reversed.

4 But I was just trying to stay to what the Court of Appeals
5 wanted us to respond back to because I think we all deeply have
6 some thoughts about one way overall what this might have been.
7 But right now it's in front of the Court of Appeals as it is
8 and they've asked us to be specific regarding certain questions
9 that we need to get back to them about.

10 They didn't send it back to us to reverse and remand this
11 and retry it, they said they wanted us to answer to some
12 questions. And so I'm just going to ask the Board if we can
13 do that.

14 And I think we were at the point where the question was
15 what's the standard? Is it a reasonable personal standard?
16 Is it specific intent of the dancer? That's kind of what the
17 ball game is and I think if you talk about California Steakhouse
18 I think it is--

19 COMMISSIONER MILLER: And I was agreeing that it was the
20 specific intent of the dancer.

21 CHAIRMAN JORDAN: That's what I was trying to get to
22 because you said something about specific and California
23 Steakhouse and that's what that is. All right.

24 I do believe that at the time we discussed it, the first
25 time, we relied heavily on what the individuals said in the

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1 room and it would be receiver and that would make it to me a
2 reasonable person standard. But certainly it's here where the
3 Board might be and I think this is one we might have to vote
4 on, Mr. Hinkle, Ms. Heath. See that's why they pay us the
5 big bucks. Well, we don't get paid.

6 VICE CHAIR HEATH: I tend to agree with Commissioner
7 Miller on this one and I have a hard time because they
8 reasonable person standard is so subjective, I have a hard time
9 siding with that.

10 And based on all of the definitions from Webster's that
11 Commissioner Miller just cited, I think all of them take us
12 back to the intent of this sort of dancing and all of the
13 activities that we heard throughout the testimony lead me back
14 to believe that it was the intent of the dancers to arouse,
15 and I am more along the lines of thinking that the definition
16 is really about intent rather than the reasonable person
17 standard. That's where I am.

18 CHAIRMAN JORDAN: Okay. Mr. Hinkle? I mean you don't
19 have to. I'm just--

20 BOARD MEMBER HINKLE: No, I think we're taking sides on
21 this I'm on the side of the intent of the dancer and I'm thinking
22 back, I mean this is related to regulations on a business versus
23 what people might expect from a business I guess. And the
24 regulation is the business causing sexual stimulation or
25 arousal essentially so I'm a bit on the intent versus

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1 reasonable--

2 CHAIRMAN JORDAN: And I can agree with my colleagues
3 because, like I said, I'm on the fence, I'm not fixed one way
4 or the other on it. So I think we can gather that for the
5 interpretation portion of this, that this should be
6 interpreted from the intent of the actor. Would that be where--

7 COMMISSIONER MILLER: Yes, that is primarily where I
8 am. There is one aspect of the action of the patron and that's
9 the actual putting of the tips in the garter but maybe that
10 goes to the next part of the fondling or touching.

11 CHAIRMAN JORDAN: Now we're going to move to part three
12 so let's talk about that. So should the Board distinguish
13 fondling from other erotic touching of the human genital pubic
14 region, buttocks -- I'm glad my mother's not listening to
15 this -- or breast.

16 Okay. So let's go back a second before we go into that.
17 So basic on the standard which we adopted is the intent of the
18 actor, was the intent to provide sexual stimulation and
19 arousal?

20 BOARD MEMBER HINKLE: I guess I'm of the thought that the
21 actor actually is the business and not necessarily the dancer.

22 CHAIRMAN JORDAN: Now see that's the other problem I
23 think we have to deal with because we have to find out whether
24 or not this was a substantial and significant portion of the
25 business, was this in line with the policy of the actor and

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1 what have you.

2 So I think we're going to come back to that because
3 that's one of the things we talked about at the time, we did
4 not find that, well four of us didn't, one did, but we did not
5 find that to be-- we found that there was evidence presented
6 to the Board that maybe one or two or whatever it was, was doing
7 it. So I think that's another question that we can get the
8 answer in question No. 6 or something. Five? Question No.
9 5.

10 But was the person gyrating and doing the stuff that they
11 were doing, was it done with the intent to be sexually
12 stimulating or to sexually arouse. And I would think that that
13 would be correct. I don't think they were just doing it for
14 fun.

15 BOARD MEMBER HINKLE: Sure.

16 CHAIRMAN JORDAN: That would be my thought. Anybody
17 else have a different thought about that? I think that what
18 they were doing and the way they were doing it was their intent
19 to get somebody sexually aroused or simulate someone sexually.

20 VICE CHAIR HEATH: Yes, would be the answer. Yes. I
21 feel that that would be intent.

22 COMMISSIONER MILLER: I would agree.

23 CHAIRMAN JORDAN: Okay. So within our definition I
24 think that we found that there was intent to be sexually
25 stimulating and arousing.

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1 Was there fondling and touching in human genital areas,
2 I would say yes. How do we define fondling? I would think
3 fondling, I think we automatically have a definition of
4 fondling based upon the Zoning Regulation 199 which says that
5 if it's not there, then we go to Webster's and I think Webster
6 has defined what it is. I don't think there should be any
7 other definition that we can bestow upon it.

8 But I guess the issue that the Zoning Administrator kind
9 of added on top of the definition of this touching lovingly,
10 gingerly, caressing, affectionately touching was, was this
11 done in passing? Was this done intentionally? Well I guess
12 this also goes to intention. Is it an issue of how long it
13 happens because it could be an accidental touch or something.

14 I think it would have to be one where the intent is on
15 reasonable length of time basis that they intended to create
16 sexual stimulation and arousal is kind of the way I would
17 answer. If they accidentally touched themselves, well you
18 can't just say oh I saw her touch her breast or I saw her touch
19 this area. Well, was she there trying to do something with
20 the touch? I don't know if that makes sense.

21 That's why I added the point about a reasonable time
22 period and I'm not talking about a month or week or whatever,
23 I'm talking about if they hold it there with the intent to,
24 there might be the other aspect. Holding it there with the
25 intent to get someone's attention. So that's our next

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1 question. Can someone--

2 BOARD MEMBER HINKLE: Yes, Mr. Chair. We did hear
3 testimony that there was touching but we also heard that it
4 was done as part of the dance for the most part with the
5 exception I think of one person that was in the Champagne Room
6 in the back.

7 So when we had this case before I did agree with the
8 Zoning Administrator's thought that there had to be some sort
9 of temporal quality to that touching, that you know fondling
10 isn't just a brief, you know, tap on the breast or what have
11 you, it's more of a lingering sort of thing. And that was what
12 the Zoning Administrator had determined and I was certainly
13 in agreement with that.

14 CHAIRMAN JORDAN: So there is an aspect of length of
15 time on this touching and basically it may not have been present
16 before us. There has to be some time aspect to this because
17 it could be accidental or whatever. Someone else?

18 COMMISSIONER MILLER: Thank you, Mr. Chairman. The
19 Webster's definition of fondling, I'm doing this off the top
20 of my head, is to handle tenderly, lovingly or lingeringly or
21 caress. And there are "ors" in each of those. It's not and
22 lingeringly, it's or lingeringly. It's tenderly, lovingly or
23 lingeringly or caress. So I would agree that if it was
24 momentary, if it was a momentary or accidental touch or a once
25 out of every 12 dances somebody accidentally touched

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1 themselves, okay. Then it might be.

2 But it's my impression on the record and from common
3 sense of what a strip club dance is, that the touching is an
4 integral part with the music of touching of the-- is an integral
5 part of the dance that's designed to sexually stimulate or
6 arouse. It may be just a momentary touch but it happens over
7 and over and over and over again.

8 So in terms of the time, if you need to have a time thing,
9 it's because it's a repeated momentary touching that happens.
10 So for me that's the standard and I can get to the conclusion
11 that there was fondling or other erotic touching because it's
12 repeatedly over and over. There's the momentary touching of
13 the breast or the genitals or the part of the buttocks, so
14 that's where I am.

15 VICE CHAIR HEATH: Where I get hung up on this part of
16 the standard is fondling or other erotic touching because "or
17 other" implies that we're not just talking about fondling, that
18 there is some other type of erotic touching. And when you go
19 back to the definition of erotic, it then relates back to this
20 definition of devoted to or tending to arouse sexual desire
21 doesn't talk about a temporal aspect.

22 So I get that fondling relates to some length of time,
23 a temporal aspect and "or other" to me implies that it doesn't
24 have to just be fondling. It could be some other type of
25 touching which could be much faster, could be hitting. I

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1 believe one of the statements during testimony talked about
2 smacking or slapping, something that's much faster, which
3 could be construed to be thought of as erotic.

4 So I have a hard time just relying on the definition of
5 fondling to determine whether or not this part of the standard
6 applies. I feel like we're still back at the same issue when
7 you talk about other touching, we're back at the issue of sexual
8 stimulation or arousal, and I feel like what was done there
9 was with the intent. And so whether it was touching, it was
10 with the intent of arousal. I have a hard time getting over
11 that part.

12 COMMISSIONER MILLER: I would appreciate your
13 explanation of focusing on the "or erotic" because I think
14 that's an appropriate focus. I think I wasn't as articulate
15 as to what I was thinking of as meeting the definition, that
16 part of the test. So I think that that's a useful focus. The
17 or erotic touching.

18 CHAIRMAN JORDAN: Part of the problem here is going to
19 the evidence presented. I'm going to deviate just a little bit
20 because know Mr. Miller said some things about things were done
21 over and over again. But I don't remember that in the
22 transcript, I'm not saying it's not, but I also have some issues
23 about some of the things that were in the affidavit versus what
24 live testimony we had here. And the credibility of the
25 witnesses and their issue and their interest. Who was biased

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1 and who was no biased?

2 So that's another little wrinkle to this whole thing
3 because you had government agents from two different agencies
4 go in and kind of conclude the same thing, ABRA and DCRA. Then
5 you had the appellant person who was a paid sponsor who stayed
6 there four or five hours or something like that. Drank about
7 \$300 of \$400 dollars worth of liquor, had a good time as they
8 said, then came out with a report. And one said they didn't
9 find it sexually stimulating. The other one who provided an
10 affidavit didn't appear before us.

11 So there's a lot in the mix with this and I guess I'm
12 trying to look at this-- based upon what we already had, you
13 know, it becomes difficult for me to say this is a SOBy because
14 of the credibility of the witnesses.

15 But going forward is something else we were talking
16 about and I think that's where you're getting at so we can have
17 some predictability in this.

18 So we've got two on the -- let's come back to that and
19 whether or not we think it requires more of a lingering-- well,
20 I think the definition from Webster's says lingeringly doing
21 it, that's not just in passing, tenderly and lovingly and the
22 smacking wouldn't fall within tenderly and lovingly or
23 lingeringly. But I understand what you're saying. What the
24 intent would be that the smack was with the intent to be sexual.
25 It's the sex police coming to your house.

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1 All right so right now we're split on that one. Let's
2 come back and bounce down to No. 4. Right? Whether the
3 Zoning Administrator reasonably made a determination with
4 regard to erotic touching at the Stadium Club, including
5 whether the activity described by the witnesses who attended
6 the Stadium Club were consistent with the ZA's determination
7 where the rules and regulations with dancers and other measures
8 implemented by the manager of the Stadium Club ws effective
9 to ensure compliance with the Zoning requirements.

10 Anyone wants to jump at that one? I think that the Zoning
11 Administrator's actions followed the investigatory report
12 which seemed to follow what the owners of the club indicated
13 was their policy. That there wasn't widespread abuse of the
14 policy, in fact the owner testified about disciplinary
15 actions that they've taken against people that they found doing
16 various things.

17 The witnesses identified I think two people out of
18 numerous people in the room who were doing these activities.
19 So I don't see anything contrary to what the Zoning
20 Administrator found based upon the evidence that was presented
21 to us. So that's just my thought about that. Others? Mr.
22 Hinkle?

23 BOARD MEMBER HINKLE: Yes, thank you, I'll jump in.
24 We initially, the Board initially had a discussion on this.
25 I think it was in December of 2010. And at that point I didn't

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1 feel that the Zoning Administrator actually did make a
2 reasonable determination and I questioned why he didn't go and
3 investigate more.

4 And just by circumstances, there was another C of O given
5 later in 2011 and that's when there was, I think, sufficient
6 investigation by the Zoning attorney. And that's why I came
7 down on the vote I did. I mean that's the time after the-- well
8 prior to giving that second permanent C of O in 2011, the Zoning
9 Administrator sent a staff person to investigate and also
10 looked at--

11 CHAIRMAN JORDAN: ABRA.

12 BOARD MEMBER HINKLE: ABRA and we got an affidavit
13 from one of the ABRA investigators. And so that's why I came
14 down on the other side thinking that actually following that
15 investigation in 2011, that the Zoning Administrator actually
16 did make a proper determination that the Club was not operating
17 as a SOBy. And it was at that time that the Zoning
18 Administrator had all the information from the appellant, had
19 the affidavits from the appellant's representatives and had
20 additional discussions with the owner if I recall.

21 So I feel that in 2011 when we made the final
22 determination, this Board made the final determination, you
23 know, I feel the Zoning Administrator did make the right
24 decision that this business was not operating as a SOBy.

25 CHAIRMAN JORDAN: Anyone else?

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1 VICE CHAIR HEATH: I think Commissioner Miller made a
2 good point earlier in one of his earlier statements about the
3 fact thaa there were 36 cameras throughout this club and that
4 no one's asked, or at least Zoning Administrator never asked
5 to see any of the tape from any of those cameras. Since we're
6 dealing with an issue of substantiality, to have someone from
7 the Zoning Administrator's office go one time to bring back
8 a report, doesn't seem to me to carry as much weight as if the
9 tapes had been watched. I'm surprised given that that level
10 of information was available, that there wasn't a request to
11 look at that video.

12 So I just wanted to bring that point back up because I
13 thought it was a really valid one.

14 CHAIRMAN JORDAN: Well there's always a lot of
15 different ways to go about doing things and we as a people seem
16 to always to do Monday morning quarter-backing, you know, after
17 the game it was you shouldn't have thrown that pass at the
18 one-yard line, we should have ran it because we have the best
19 halfback. And should he have sent people there every day for
20 a week or for two months? Should he have held interviews?
21 No, I'm not knocking what you're saying, I'm saying if we start
22 going after every thing that was possible to be done you know.

23 And then who's going to review the tapes and who's going
24 to get paid to review the tapes? There's a lot of stuff.

25 BOARD MEMBER HINKLE: Mr. Chair, if I could jump in just

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1 on this point. We also did have testimony from the operators
2 of the club that they did sit and watch the cameras and if there
3 were some issues involved with the dancers that they would go
4 out and have reprimands or what have you. I don't remember
5 exactly the testimony but I think at that time I was satisfied
6 as a Board member that while the Zoning Administrator didn't
7 look at all the tapes if they were available, that actually
8 the club did take actions when they saw that some rules and
9 regulations of the club were not being followed.

10 CHAIRMAN JORDAN: So do we need to vote on this or can
11 we just say that we believe that the Zoning Administrator did
12 a reasonable investigation sufficient to conclude the way he
13 did? Is that all right or do we need to vote on that? What
14 do we need to do? We're okay unless there's a big objection
15 then we'll move forward. Okay so we'll move forward on that.

16 No. 5 -- it's like taking castor oil, well some people
17 might like that, excuse me. What evidence in the record
18 adequately supports a determination by the Zoning
19 Administrator that the type of activity occurring at the
20 Stadium Club does not promote sexual stimulation or arousal
21 and therefore would not constitute a specific sexual activity
22 considering especially the Board's decision in California
23 Steakhouse. What does that mean?

24 Whether the evidence in the record adequately supports
25 a determination, I think that's kind of the same question we

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1 just answered, I would go by the same answer we just gave. We
2 just went through that. That was the same question, 4 and 5
3 are the same to me. Do we need anything more than that?

4 VICE CHAIR HEATH: I thought you had found before that
5 that was sexual stimulation.

6 CHAIRMAN JORDAN: Or does not promote. But does not
7 promote. See, it's different that somebody did it but what are
8 they doing to promote it? They actually had a policy against
9 it and they had disciplined people.

10 That's what I said. Every word here is just like you're
11 getting ready to step into a trap.

12 COMMISSIONER MILLER: Mr. Chairman, when you were on
13 No. 4, I didn't speak but in terms of whether the ZA reasonably
14 made a determination regarding erotic touching, I don't agree
15 that he did reach a reasonable determination. I don't think
16 he reached the correct determination. I think he had enough
17 information, although I think there was a lot more information
18 that could have been obtained. I don't think he reached the
19 right conclusion but I think he had enough information to make
20 a determination and I don't agree that the evidence in the
21 record adequately supports the determination by the ZA that
22 the type of activity occurring at this club does not promote
23 sexual stimulation or arousal.

24 So I don't agree with the conclusions in No. 4 or 5.

25 CHAIRMAN JORDAN: I think the record was really clear

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1 regarding the activity of the entity, not the individual women
2 who are independent contractors but on the organization
3 itself. We had the regulations that are in place, the rules
4 at the club and we had evidence that the owner not only has
5 these rules but enforces the rules and people who have been
6 fired and disciplined and fined for violating these rules.

7 We had nothing to the contrary of that. There was not
8 one person said oh no, that's wrong, those people weren't
9 fired. We had nothing presented before us that said oh they
10 weren't fined, you knew about this and it didn't happen. That
11 was never presented. Never in any of the witness's statements
12 nor by affidavit. So that's where I am on No. 5. I mean anybody
13 else? Do we need to vote on No. 5? Okay.

14 It's like people drive up and down the street and some
15 people run red lights. Does the city fine everybody? No,
16 because they don't see everybody. All right. I said in 5 that
17 I thought he met the standard, that there was enough to support,
18 there was enough evidence to show that the Stadium Club did
19 not promote the sexual stimulation or arousal. All those in
20 favor say aye? Opposed?

21 [VOTE TAKEN]

22 All right, Ms. Heath, where were you on that? All
23 right. So we've got 2-2. There's another one that's out there
24 so we're not going to be able to get these answers back because
25 we're going to move on.

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1 Whether the Board should evaluate potential acts of
2 sexual stimulation or arousal by considering the intent of the
3 provider, a specific type of nude dancing or other merits such
4 as reasonable person standard. Okay. See I knew it was in here
5 before.

6 Okay. So then that's how we're answering this so far.
7 We've got some things that were left out. I don't know how we
8 handle that. We have two that we didn't answer because we
9 couldn't reach a conclusion on it.

10 MS. GLAZER: Do you want to leave it hanging for a while
11 or do you want to make a motion?

12 CHAIRMAN JORDAN: I would move that we submit the
13 answers that we just came up with to the Court of Appeals. 4
14 was okay, 5 and the other one, whichever other we disagreed
15 and we said we're going to come back to, 3 and 5.

16 All right. So let's do this. How are we going to resolve
17 it? I don't have the answer to that and I think we can stay
18 here all night just to deal with-- I don't know if we're going
19 to be able to resolve it as we sit here.

20 MS. GLAZER: What do you want to do, schedule another
21 decision?

22 CHAIRMAN JORDAN: Yes. We can do that. Now or never.
23 All right. So we'll give some more time for people to go back
24 into the record and we'll put 3 and 5 back on for another docket
25 to deal with. At least we're trying. I mean this stuff is not

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1 easy. It really is not easy and we have to give something
2 back to the Court of Appeals and it's not like we're trying
3 to not do it. Right? We're just as the world turns. All
4 right. So we'll put this on another docket. When is Mr.
5 Miller's next day?

6 SECRETARY MOY: Yes, it's July -- let me double check
7 here. Here we go, it's July 21st, sir, when Mr. Miller will
8 be--

9 CHAIRMAN JORDAN: All right. And we'll probably have
10 another Board member by then so we can break our ties and that
11 will be fine. But let's move on, I mean really this is not easy
12 stuff. I'm telling you if you just do the research you will
13 fine, city, state, jurisdiction after jurisdiction going
14 through this exercise and it's something that's so important
15 we really shouldn't be rushing to do it. This case has been
16 around a long time and it's just indicative of that type of
17 issue.

18 All right. So let's move on to our decision case. I'm
19 discombobulated today. Let's wait for -- yes, we have another
20 commissioner come out. In fact, let's do our 10:30 five-minute
21 break at this point.

22 (A BRIEF RECESS WAS TAKEN)

23 CHAIRMAN JORDAN: All right. Application No. 19007.

24 SECRETARY MOY: That will be Application No. 19007 of
25 Jonathan and Jessica Leonard for variance on the number of

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1 stories requirements under Section 400.1 at 18 T Street, N.E.

2 COMMISSIONER MILLER: I am concerned that there may be
3 other more appropriate remedies to them. I'm concerned about
4 the precedent of giving a variance when there's been illegal
5 construction. We know that there's some ongoing
6 investigation of a lot of cases of illegal and shoddy
7 construction and I just I guess am concerned about the
8 precedent which I think ANC-5E also expressed a concern that
9 if at the end of the day after all the illegal and shoddy
10 constructions they can get zoning relief and allow it to stand,
11 how does that deter other bad actors in terms of renovating
12 property and selling it for a substantial profit when the work
13 wasn't necessarily completed or done.

14 So I kind of get to the same conclusion you got to but
15 not exactly in the same way.

16 CHAIRMAN JORDAN: I also include and thank you because
17 that is also a fundamental basis of what I was trying to reach.
18 Anyone else?

19 BOARD MEMBER HINKLE: Yes, Mr. Chair. I just wanted to
20 chime in. We didn't necessarily discuss actually some of the
21 conditions of the property that you know where there for
22 creating an exceptional situation that would allow us to grant
23 the relief. And that was part of my concern and with the
24 exception of OP's report, the whole focus of the hearing was
25 more in the hardship of the contract purchasers versus the

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1 property itself. So again that was my concern--

2 CHAIRMAN JORDAN: That just wasn't clear.

3 BOARD MEMBER HINKLE: Right. And I'm also in agreement
4 with Mr. Miller in terms of the potential precedent that this
5 could set.

6 CHAIRMAN JORDAN: All right. Do you want to make a
7 motion?

8 BOARD MEMBER HINKLE: Go for it.

9 CHAIRMAN JORDAN: All right. I move that we deny the
10 request for relief in 19007.

11 VICE CHAIR HEATH: Second.

12 CHAIRMAN JORDAN: Motion made and second. Any further
13 discussion? All those in favor, aye? Those opposed nay?

14 [VOTE TAKEN]

15 The motion carries.

16 CHAIRMAN JORDAN: All right. 18987.

17 SECRETARY MOY: That will be application No. 18987 of
18 Pierce Investments. Again, the Board heard testimony and
19 closed the record on June 9, 2015 and we're here today for a
20 decision. The record was closed except for a supplemental
21 information from the applicant which was filed in the case
22 records and I'll leave it at that, Mr. Chairman.

23 CHAIRMAN JORDAN: All right. I'm kind of on the fence
24 with this one. I'm still concerned about the height of this
25 and the character of the neighborhood. We have the Office of

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1 Planning recommending the denial with regards to the height
2 and the FAR which I can agree with. But did we ever get
3 ANC-5D's report? Did we get that?

4 SECRETARY MOY: No sir.

5 CHAIRMAN JORDAN: Okay. Well so I have a concern about
6 the height and FAR but let me hear from the other Board members.
7 Anyone? The rear yard shouldn't be an issue. Any thoughts?
8 Mr. Miller?

9 COMMISSIONER MILLER: Well, just thoughts maybe not
10 well thought out thoughts. Normally I think I would be
11 supportive of what is kind of a de minimis FAR and building
12 height relief that's being requested. And particularly on
13 a long vacant and somewhat of a nuisance property for the
14 neighborhood. I mean it seems like a well designed project.

15 I'm a little bit concerned. Basically to me it seems like
16 it's one story too tall. In terms of the breadth character of
17 the neighborhood it's two stories, there will be two-story
18 houses all around it and it's a big 5-story, big in relation
19 to the 2-stories. And so it just seems out of character
20 although the zoning permits up to 50 feet and this is only 53
21 and a half.

22 I agree that the rear yard they've done a good job of
23 setting it back and creating distance there that's appropriate
24 for the character. But I guess it's the number of stories in
25 relation to the neighborhood that I'm still a bit concerned

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1 about. Even though it's only three and a half feet above
2 what's permitted as matter of right, this little pocket of
3 zoning it seems almost like this one lot is zoned different
4 than the rest of the neighborhood, it's a little strange.

5 CHAIRMAN JORDAN: Thank you. Ms. Heath?

6 VICE CHAIR HEATH: I'm in agreement. I think it was
7 stated well that this project appears to be one-story too high
8 in proportion to the rest of the neighborhood. And when you
9 look at the neighboring buildings it really stands out.

10 I appreciate the effort to step back those upper stories
11 but it really is too tall so I have a problem with the height.

12 CHAIRMAN JORDAN: Wait a minute. What supplemental
13 filing and when was this filed? Is it one that we have or don't
14 have?

15 SECRETARY MOY: Yes, we have it. It's June 12th
16 Exhibit No. 36, Mr. Chairman. I'm looking through it now,
17 Mr. Chairman.

18 CHAIRMAN JORDAN: Oh I think we already looked at at,
19 yeah. We've already looked at it. That's the same
20 one -- yes, it's the one we're talking about. It's not any
21 different than what we're talking about. We're on the same--

22 SECRETARY MOY: We're good?

23 CHAIRMAN JORDAN: Yes, we're fine. We're on the same
24 one. I was looking at it and I thought something came in like
25 overnight like we typically get. Okay. All right. So I

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1 would move that we grant the relief in this application for
2 the rear yard and deny the other relief as to FAR and the height.

3 BOARD MEMBER HINKLE: Well, Mr. Chair let me just--

4 CHAIRMAN JORDAN: Oh I'm sorry.

5 BOARD MEMBER HINKLE: I'm sorry. With the supplemental
6 filing the applicant did state that they could modify the plans
7 for a 50-foot structure and eliminate the request for height.
8 And then supplement the record with the revised plans.

9 COMMISSIONER MILLER: All right. And I'm looking at
10 that supplemental filing and the ANC said that they would be
11 sending a letter to the Board requesting an additional two
12 weeks to submit a resolution. I guess they didn't send that
13 yet though. But they were given this choice by the applicant
14 at their meeting I guess it was last week, they'll reduce the
15 height but they'll also have to eliminate the neighborhood
16 serving retail and they basically were giving the community
17 a choice. And I think we should maybe wait to get that
18 community position back.

19 CHAIRMAN JORDAN: All right. We can do that. All
20 right. Let's put this over for 30 days. Mr. Moy, Mr. Miller's
21 date is--

22 SECRETARY MOY: July 21st.

23 CHAIRMAN JORDAN: How are we looking on that date?

24 SECRETARY MOY: We're looking -- you will not be bored
25 that day.

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1 CHAIRMAN JORDAN: Well we're not putting it then.

2 COMMISSIONER MILLER: I can come back sooner, I'm not
3 going anywhere.

4 CHAIRMAN JORDAN: It's just like today's docket, you
5 know, we've been trying to please people and we've got these
6 things going crazy.

7 SECRETARY MOY: All right. Well, the best docket would
8 be June 30th,

9 CHAIRMAN JORDAN: June 30th? They're not going to have
10 time to--

11 SECRETARY MOY: Okay. Well then let's go with July 7th.

12 CHAIRMAN JORDAN: And Mr. Miller's date was the 21st?

13 SECRETARY MOY: Correct.

14 CHAIRMAN JORDAN: And what's his next date?

15 SECRETARY MOY: After July 21st? He hasn't selected a
16 date yet.

17 CHAIRMAN JORDAN: No, no, it had nothing to do with Mr.
18 Miller's date. So what do we have on the 14th? How are we
19 looking at July 14th?

20 SECRETARY MOY: July 14th is good, sir.

21 CHAIRMAN JORDAN: All right. There we go. All right.
22 And so if there's any changes to any plans or all that stuff,
23 they need to be in by the 7th, Mr. Moy?

24 SECRETARY MOY: Correct.

25 CHAIRMAN JORDAN: July 7th?

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1 SECRETARY MOY: Yes sir.

2 CHAIRMAN JORDAN: All right. Is that it for you?
3 Wow, we haven't even started the hearing docket and it's 11
4 o'clock. We haven't finished the meeting cases.

5 Let's do this. Is anyone here on is it 19009? Let's call
6 that one, Mr. Moy. Joining us is Marcie Cohen, member of the
7 Zoning Commission.

8 Please introduce yourselves.

9 MR. SULLIVAN: Good morning, Mr. Chairman and members of
10 the Board. My name is Marty Sullivan here on behalf of the
11 owner of 1117 Allison Place.

12 MR. TONDRO: Good morning. My name is Maximilian
13 Tondro with DCRA.

14 CHAIRMAN JORDAN: Okay. Is there anyone here from the
15 appellant? 19009. It's my understanding that DCRA filed a
16 motion that this is moot and it was my opinion even before you
17 filed a motion that this was moot.

18 There was a relocation of the building permit, is that
19 correct?

20 MR. SULLIVAN: Yes.

21 CHAIRMAN JORDAN: Okay. So that's all gone. This thing
22 actually went to OAH and it's been dismissed with prejudice
23 so it's not going to be revised. Is that right? This
24 building permit?

25 MR. SULLIVAN: Yes sir.

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1 CHAIRMAN JORDAN: Okay. Now is the appellant here?
2 Right. So then we'll dismiss this as moot. All right. See,
3 we want to make that painless. Got to manage this docket.

4 19008. Do you want to call that one?

5 SECRETARY MOY: I'm sorry, sir, which case now?

6 CHAIRMAN JORDAN: 19008.

7 SECRETARY MOY: Okay. Application No. 19008 of Joe and
8 Joyce Hezir. This is an application that's on the Board's
9 expedited review calendar, Mr. Chairman, special exception
10 relief.

11 CHAIRMAN JORDAN: Okay. This is on expedited meeting
12 review. There's no testimony or anything that we need from
13 individuals on this.

14 SECRETARY MOY: That's correct.

15 CHAIRMAN JORDAN: I've reviewed the record on this case
16 and and I believe that there's sufficient information in the
17 file that supports the applicant's request for relief. Any
18 other thoughts? Discussion? Mr. Hinkle?

19 BOARD MEMBER HINKLE: No, I tend to agree, Mr. Chairman.

20 VICE CHAIR HEATH: Agree.

21 CHAIRMAN JORDAN: Then I would move we grant the relief
22 in 19008.

23 VICE CHAIR HEATH: Second.

24 CHAIRMAN JORDAN: Motion made and second. All in favor
25 of the motion, aye? Those opposed, nay?

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1 [VOTE TAKEN]

2 The motion carries.

3 SECRETARY MOY: Summary order, sir?

4 CHAIRMAN JORDAN: Yes please.

5 SECRETARY MOY: Thank you.

6 CHAIRMAN JORDAN: All right. 17606.

7 SECRETARY MOY: All right. That's the application of
8 Dakota Points request for a time extension.

9 CHAIRMAN JORDAN: Okay. This thing has been
10 before-- this has been before us before hasn't it? Yes. It's
11 been before us a couple of times. And the zoning regulations
12 removed the maximum times that you can get an extension and
13 that occurred due to the downtown of the market some years ago.
14 The market's back up and swinging. This is a development which
15 they are already beginning to complete, well they are
16 completing phase 1. Phase 2 is not ready to start and that
17 there's some impediments to starting phase 2, that being the
18 LDA, the Land Disposition Agreement is still being negotiated.

19 There's some other physical changes to the road and
20 other things that have to happen that piggyback upon phase 1
21 and so the project is not ready and they're requesting a 2-year
22 extension.

23 I'm inclined to grant the 2-year extension. Anyone
24 else want to weight in on it?

25 COMMISSIONER COHEN: Mr. Chairman, there's two things

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1 that are of concern to me. First of all, giving another
2 extension, making it No. 4, and also I couldn't accept their
3 discussion with regard to changes in the original proposal from
4 rental to for sale. And I think that they should just come in
5 with a new request.

6 CHAIRMAN JORDAN: Any other discussion? Anyone?
7 Well I would move that we grant the extension, this 2-year
8 extension. That will be my motion.

9 BOARD MEMBER HINKLE: I'll second,

10 CHAIRMAN JORDAN: Motion made and second. Any
11 additional discussion? All those in favor of the motion, aye?
12 Those opposed, nay?

13 [VOTE TAKEN]

14 The motion carries. Mr. Moy?

15 SECRETARY MOY: Secretary would record the vote as
16 3-to-1. This on a motion by Chairman Jordan to grant the 2-year
17 time extension. Second the motion, Mr. Hinkle. Also in support
18 Vice Chairperson Heath. Opposed Ms. Cohen. Board seat vacant
19 but the motion carries 3-to-1, sir.

20 CHAIRMAN JORDAN: Summary please.

21 SECRETARY MOY: Thank you, sir.

22 CHAIRMAN JORDAN: 18992.

23 SECRETARY MOY: Application No. 18992. This is of
24 Congressional 1015 E Street, LLC. The Board, if you will
25 recall, last heard testimony and closed the record on May 5,

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1 2015. Decision for today June 16.

2 The Board requested additional information from the
3 applicant and that was filed and that's under your Exhibit 41B
4 revised plans, as well as amending I believe the application
5 for nonconforming structure under 2001.3 lot occupancy under
6 772.1, width 776.3 and closed court area under 776.4, sir.
7 That's the amended relief.

8 CHAIRMAN JORDAN: All right. Thank you. Is the Board
9 ready to deliberate on this case? All right. This is one
10 that we had some great pause when it was up for hearing. We
11 subsequently have gotten some change of plans and there's
12 been meetings with the neighbors and they signed off kind of
13 on call it a neighborhood agreement to some extent, a
14 neighbor's agreement.

15 The ANC has also weighed in and changed its
16 consideration in supporting this new revised project.
17 There's been some different changes of zoning relief and I'm
18 just kind of on the borderline of whether or not we should
19 require this to be re-advertised since it's such changes to
20 the zoning relief.

21 The only reason why I would not want to send it back to
22 be re-posted and noticed is because this comes about after the
23 community discussion and all the most affected neighbors etc.,
24 have been part of this process and have all signed out on it,
25 and they were the ones who appeared at the hearing last time.

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1 And so if people had an interest in it they would have probably
2 been in the first time and this use is now, in my opinion, less
3 imposing on the neighborhood than the other.

4 So unless the Board has any exception to it, I would say
5 that we go ahead and process it without new notice. Thoughts?

6 BOARD MEMBER HINKLE: No, I agree and the fact that the
7 ANC also weighed in on this revised plan that helpfully get
8 to the point to not re-advertise it.

9 CHAIRMAN JORDAN: Anyone else? All right. Then with
10 that I would move that we grant the relief requested in the
11 amended documents. That would be my motion.

12 BOARD MEMBER HINKLE: I'll second and being the one that
13 encouraged them to take another look and see how they could
14 redesign this I appreciate the effort that the applicant made.

15 CHAIRMAN JORDAN: That's important. Talking to the
16 community and the neighbors because they were really dead but
17 for going back out.

18 BOARD MEMBER HINKLE: Yes.

19 CHAIRMAN JORDAN: And I do want to note we did get some
20 extra letters that continued to express concerns about a large
21 tree in the neighborhood but I'm not sure that we could
22 necessarily have done much for that.

23 CHAIRMAN JORDAN: Any further discussion on this one?
24 All right. All those in favor of the motion, aye? Those
25 opposed, nay?

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1 [VOTE TAKEN]

2 The motion carries. Mr. Moy?

3 SECRETARY MOY: Yes sir. Before staff gives the vote
4 there is an absentee ballot from a participant on this
5 application that is from Mr. Anthony Hood and his absentee vote
6 is to approve the application with the amended relief and the
7 revised and the revised plans, sir. So that would give a total
8 vote of 4-0 on the motion of Chairman Jordan to approve of the
9 amended relief. Seconding the motion Mr. Hinkle, also in
10 support Vice Chairperson Heath and of course Mr. Hood. Board
11 seat vacant, motion carries 4-0, sir.

12 CHAIRMAN JORDAN: Summary.

13 SECRETARY MOY: Yes. Thank you. That completes the
14 cases for decision, Mr. Chairman. I just want to add also for
15 the record that at 9:30 one of the cases that was on the
16 expedited review calendar, application No. 18958, Patrick
17 Scott, was withdrawn.

18 CHAIRMAN JORDAN: Okay. Did you see plans in 18984?
19 All right. Let's just step through them. So let's do 19014.

20 SECRETARY MOY: Okay. Parties to the table to
21 application No. 19014 of Gary A. Robinson II. This is applicant
22 requesting varianc relief as advertised at property 321-Rear
23 3rd Street, N.E.

24 CHAIRMAN JORDAN: All right. Thank you, Mr. Moy. Please
25 introduce yourselves.

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1 MS. BROWN: Good morning, Mr. Chair, members of the
2 Board. Carolyn Brown with the law firm of Castro Haasse & Brown,
3 and to my right is Mr. Gary Robinson the owner of the property

4 CHAIRMAN JORDAN: Okay. Before we begin let me turn to
5 the Office of Planning and try to understand. The Office of
6 Planning report is that you can't recommend approval and I
7 think, is this the case where you're using a use variance
8 standard? But you talked in regards to your analysis with the
9 practical difficulty discussion. Did you look at this as a
10 use variance or did you look at this as a--

11 MS. BROWN-ROBERTS: We looked at it as a use variance.
12 In Section 2507 I think in 2507.1 is the area where it talks
13 about the different uses and then when it continues on to 2
14 and 3, you know, those are just additions to what is stated
15 in 1.

16 CHAIRMAN JORDAN: Ms. Brown?

17 MS. BROWN: Thank you, Mr. Chair. We looked at 2507.1
18 and if you read it I think it's pretty clear that we are a
19 one-family dwelling so that we can proceed and--

20 CHAIRMAN JORDAN: It comes under section 3103.5.

21 MS. BROWN: Correct.

22 CHAIRMAN JORDAN: As setting precedence that this is an
23 area variance.

24 MS. BROWN: Correct.

25 CHAIRMAN JORDAN: I would agree with that. Board, any

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1 other issues? I think we do look at this as an area variance.
2 All right. Thank you. Thank you both.

3 With that, if you look at this as an area variance,
4 turning back to OP, would your recommendation change?

5 MS. BROWN-ROBERTS: I don't think so because I still
6 don't see from what we have received I don't see where there's
7 an exceptional situation that leads to the practical
8 difficulties. So I think that is where our concern is.

9 CHAIRMAN JORDAN: Okay. So Ms. Brown, would you hit
10 that point for us please?

11 MS. BROWN: Yes sir. Thank you. We believe that there
12 is a sufficient nexus between the exceptional and
13 extraordinary conditions in this property and the practical
14 difficulties that they creates.

15 No. 1, we have an exceptionally and unusual shape of the
16 lot. It's sort of a T or L-shaped on two narrow alleys. The
17 history of the construction of the property is that it was a
18 coach factory constructed circa 1905 as a 3-story building then
19 later the south leg was constructed, probably prior to 1920,
20 probably 1918 or something.

21 It wraps around an existing stable building so it's a
22 very unusual shaped lot on narrow alleys and I think we have
23 more of those explanations of extraordinary conditions in our
24 statement. These conditions create practical difficulties in
25 complying with the regulations. We cannot deed or dedicate

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1 more land to widen the alley to be 30-feet wide. We can't buy
2 additional land to have street frontage and we can't use the
3 property for permitted uses, namely artist's studio or a
4 garage. So those are the practical difficulties that are
5 created.

6 And with respect to a garage, you potentially could fit
7 two cars in this--

8 CHAIRMAN JORDAN: I was going to ask you that.

9 MS. BROWN: Potentially two cars in the basement or on
10 the ground floor level but it's very difficult to maneuver
11 through the alley because it is narrow. So while you could
12 certainly use it for cars, you wouldn't have a high market for
13 it. And then additionally it would leave the upper floors
14 unused.

15 Second, if you were trying to rent it out as an artist's
16 studio, the rents that you could potentially get for it do not
17 support the debt on the property. And in order to support
18 the debt on the property, and I think we have this in our
19 statement and Mr. Robinson can explain it in greater detail,
20 you would have to charge at least \$2 dollars per square foot
21 and have it fully occupied and even then you're not
22 necessarily at the break-even point. And the going rates for
23 artist's studio space are roughly
24 \$1.25 in the area.

25 And I know the Office of Planning had requested some

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1 additional information and yesterday we uploaded to the record
2 some additional information on the square footage prices for
3 artist's studio. We have additional copies that we can
4 distribute to the Board if you haven't had a chance to look
5 at it.

6 CHAIRMAN JORDAN: No, we would not have had a chance to
7 look at it.

8 MS. BROWN: Okay.

9 CHAIRMAN JORDAN: I tell you when people file something
10 last minute you're at your own risk and peril because basically
11 if it's not in by Friday we almost don't look at it.

12 MS. BROWN: And I believe that there is sufficient
13 evidence in what we submitted earlier, we just have
14 supplemented it in a different readable format for you.

15 CHAIRMAN JORDAN: I understand.

16 MS. BROWN: So we do believe that we have proved a
17 sufficient nexus between the exceptional and extraordinary
18 conditions and the practical difficulties that creates in
19 complying with the regulations. And again I can have Mr.
20 Robinson go into greater detail if you need that.

21 CHAIRMAN JORDAN: Now you contend it's not functional
22 as a garage because what again?

23 MS. BROWN: Well, No. 1, I think only one of the spaces
24 would be a standard space for meeting the zoning regulations.
25 I think you can get a compact space in there 8 x 16. The other

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1 leg, the south leg, is too narrow to actually get either a
2 standard or compact space in there. So that makes it
3 difficult plus it means it's only the lower floor that's
4 occupied and then the upper would not be able to-- you can't
5 use the upper floors for the garage.

6 CHAIRMAN JORDAN: And where do your cost comparisons
7 come from?

8 MS. BROWN: Mr. Robinson prepared them based on
9 coordination with his broker.

10 VICE CHAIR HEATH: And I'm sorry, who is the broker?

11 MR. ROBINSON: The broker is Lina McAuliffe from Cox &
12 Cox Real Estate Group. We have a copy of her letter too that
13 I uploaded showing her analysis of the property and I also
14 pulled a lot of information from-- I've been looking at this
15 for a number of years about artists' studios, studio space
16 within the Capitol Hill area and I've even widened it to all
17 of pretty much D.C. and the surrounding area.

18 MS. BROWN: And if I may, Mr. Robinson is a woodworker
19 and that's one of the reasons he started looking at this
20 property for his own use in that regard.

21 COMMISSIONER COHEN: Has this gone to the Capitol Hill
22 Historic District for review?

23 MR. ROBINSON: Yes ma'am it did. I presented it I
24 believe it was a little less than a month ago. They had no
25 objections but they haven't provided a letter or anything or

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1 gotten back with me.

2 MS. BROWN: There is a letter from the ANC in support
3 that was filed last night.

4 COMMISSIONER COHEN: That I saw.

5 MS. BROWN: And in addition several of the neighbors
6 have supported this as well. They're very supportive because
7 it would convert sort of a commercial use that's been
8 deteriorated over the past 30 years. There's a lot of
9 deferred maintenance in this property and they would love to
10 see it as a residential use.

11 CHAIRMAN JORDAN: Okay. Any other questions of the
12 applicant anyone? All right. Turning back to the Office of
13 Planning.

14 MS. BROWN-ROBERTS: I think we've just gotten-- I have
15 not been able to review what was submitted yesterday. Thanks.

16 CHAIRMAN JORDAN: Okay. Board questions of Office of
17 Planning? Okay. All right. Applicant in question of Office
18 of Planning?

19 MS. BROWN: No questions.

20 CHAIRMAN JORDAN: Let me go back to Planning again. So
21 what do you see going in the space that can be operated in this
22 space in a reasonable manner?

23 MS. BROWN-ROBERTS: It's not that we have a problem
24 with the conversion. I think the problem is meeting the zoning
25 requirements, really demonstrating that you know there is an

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1 exceptional situation. I agree that the shape of the
2 property, you know, it's an unusual T. But the alleys are
3 existing situation that have existed forever there. And there
4 has been no anticipation that they were going to be enlarged
5 to accommodate a residential use.

6 So I don't still see the nexus between the shape of the
7 property and the alleys. That's an existing situation. And
8 so in addition to that, the Fire Department also has some
9 concerns which have not been addressed at this stage. The
10 applicant said they were going to address it at the time of
11 the building permit but that still has us concerned.

12 CHAIRMAN JORDAN: And did I miss that? I didn't see
13 anything here on Fire. What's the Fire situation?

14 MS. BROWN: Mr. Chairman, the Fire Department we did
15 speak with one of the fire chiefs about the sprinkling of the
16 building and whether or not it would be required under the new
17 fire code.

18 There is an exemption for residential buildings but it
19 may not apply if this was a non-residential use first and we're
20 working through that. But we're going to comply with whatever
21 the Fire Department tell us to do. And if it needs to be
22 sprinkled it's going to be sprinkled.

23 CHAIRMAN JORDAN: So it's not an issue about taking up
24 the alley and blocking the alley?

25 MS. BROWN: No sir.

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1 CHAIRMAN JORDAN: All right. Anyone here from the
2 Department of Transportation? We do have a letter of no
3 objection from the Department of Transportation. Anyone here
4 from ANC-6C? Did we get a letter from 6C?

5 COMMISSIONER COHEN: We did.

6 CHAIRMAN JORDAN: And their support. All right.
7 Anyone here wishing to speak-- oh DCHD? Anyone from Housing
8 Development? Department of Housing and Development? No?

9 Anyone here wishing to speak in support of the
10 application? Anyone in opposition? And we'll close the
11 record. Is the Board ready to deliberate on this case?

12 COMMISSIONER COHEN: Yes.

13 CHAIRMAN JORDAN: Okay. Anyone wants to lead it off?
14 Ms. Cohen?

15 COMMISSIONER COHEN: I would like to make a motion.

16 CHAIRMAN JORDAN: Sure.

17 COMMISSIONER COHEN: I'd like to move to approve
18 application No. 19014 for Gary A. Robinson II for a variance
19 from width requirements under 2507.3 to allow the alteration
20 and conversion of an existing non-residential building into
21 a one-family dwelling on a alley lot where the alley is less
22 than 30-feet in width in this CAPR-5-8 District at premises
23 320-Rear 3rd Street, N.E., also known as Square 756, Lot 826.
24 And I'd ask for a second.

25 VICE CHAIR HEATH: Second.

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1 CHAIRMAN JORDAN: Motion made and second. Any further
2 discussion? All those in favor of the motion, aye? Those
3 opposed, nay?

4 [VOTE TAKEN]

5 The motion carries. Mr. Moy?

6 SECRETARY MOY: Staff would record the vote as 4-0.
7 This on the motion of Ms. Marcie Cohen to approve the
8 application for the relief requested. Second the motion Vice
9 Chairperson Heath. Also in support Chairman Jordan, Mr Hinkle,
10 we have Board seat vacant. Motion carries 4-0, sir.

11 CHAIRMAN JORDAN: Summary please.

12 SECRETARY MOY: Thank you.

13 MS. BROWN: Thank you very much.

14 CHAIRMAN JORDAN: Okay. 19017.

15 SECRETARY MOY: All right. To the table the applicant
16 to application No. 19017 of the Department of General Services
17 of the District of Columbia. This is requesting relief, Mr.
18 Chairman, for a variance from the access, maintenance and
19 operation of loading berth requirements. This is a property
20 3401 4th Street, S.E.

21 CHAIRMAN JORDAN: Is the applicant here?

22 SECRETARY MOY: Doesn't appear to be.

23 CHAIRMAN JORDAN: Is the applicant here? Don't get
24 comfortable yet. Now first of all this is one case that
25 shouldn't even be here. This should be in front of the City

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1 Administrator having a discussion with the various departments
2 that are fighting each other, which I don't understand.

3 And then the applicant being D.C. schools are not here.
4 So put this on the show cause.

5 SECRETARY MOY: Yes sir.

6 CHAIRMAN JORDAN: So we put it on a 30-day show cause.
7 What's the date?

8 SECRETARY MOY: That would be -- just give me a second,
9 sir.

10 CHAIRMAN JORDAN: It's actually DGS General Services,
11 it's not public schools. Don't you guys talk.

12 SECRETARY MOY: July 21st sir.

13 CHAIRMAN JORDAN: All right. July 21st. Okay. Very
14 good. Thank you.

15 All right. I guess we keep pecking through so let's do
16 18897.

17 SECRETARY MOY: Applicants to 18897. This the
18 application of Julian Hunt and Lucrecia Laudi. This is an
19 application, Mr. Chairman, at property 1504 Swann Street N.W.,
20 and requesting multiple variance relief.

21 CHAIRMAN JORDAN: Okay. I think we're good. All right.
22 Please introduce yourselves. Turn your microphone on.

23 MS. LAUDI: Okay. I would like to introduce myself.
24 Lucrecia Laudi and Julian Hunt. The case is based on our house
25 actually--

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1 CHAIRMAN JORDAN: You had me when you gave your name.
2 All right.

3 MS. LAUDI: Julian--

4 MR. HUNT: My name is Julian Hunt.

5 CHAIRMAN JORDAN: Okay. Thanks. You both turned your
6 witness cards in?

7 MS. LAUDI: Yes.

8 CHAIRMAN JORDAN: All right. This is case in front of
9 us for I think the relief from lot occupancy under 403.2 and
10 rear yard. I reviewed this application. Oh and then 2001.3
11 for non-conforming use. I don't think I have any issues of
12 questions with the relief. Anybody have any issue with this?

13 Seems that the Board is content that there's sufficient
14 information already in the record that would allow us to grant
15 you the relief you're requesting. So unless you object we will
16 proceed on and move to conclusion. All right? Unless you
17 thought you needed to say something.

18 So then we'll to the Office of Planning.

19 MS. VITALE: Good morning, Mr. Chair, members of the
20 Board. The Office of Planning supports the requested relief
21 and will rest on the record. I can answer any questions that
22 you have.

23 CHAIRMAN JORDAN: Board, questions of planning?

24 BOARD MEMBER HINKLE: Just one quick question. I
25 think it's your second report you note that any BZA relief

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1 granted should be subject to approval by the HPRB. Is that--

2 MS. VITALE: Yes, that is correct. The applicant's have
3 been before HPRB. The HPRB supported their application. HPRB
4 did mention a few conditions of its approval that would not
5 impact the variance relief. So I think everything has proceeded
6 along appropriately. They have gone before HPRB and do have
7 that approval.

8 CHAIRMAN JORDAN: Okay. Thank you. Any other
9 questions? Applicant, any questions of Office of Planning?

10 MS. LAUDI: Not really.

11 CHAIRMAN JORDAN: Okay. Anyone here from the
12 Department of Transportation for this particular case? We
13 have a letter of no objection from Department of
14 Transportation. Anyone here from ANC-2B? ANC-2B? We have
15 a letter recommending approval from ANC-2B. And we also have
16 14 letter s from various neighbors, etc., who are supporting
17 your requested relief.

18 Anyone here wishing to speak in support? Anyone in
19 support? Anyone in opposition? Anyone in opposition?
20 Then we will close the record on this case and I would move we
21 grant the relief in 18897.

22 COMMISSIONER COHEN: Second.

23 CHAIRMAN JORDAN: Motion made and second.
24 Discussion?

25 BOARD MEMBER HINKLE: Yes. Mr. Chair, I would recommend

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1 that we add a condition as recommended by the Office of Planning
2 that HPRB allow some flexibility based on HPRB review.

3 CHAIRMAN JORDAN: And unless there's some objection we
4 will include that in the motion and the order. All those in
5 favor, aye? Those opposed, nay?

6 [VOTE TAKEN]

7 The motion carries. Mr. Moy?

8 SECRETARY MOY: Staff would record the vote as 4-0, this
9 on a motion by Chairman Jordan to approve the request for
10 variance relief plus the addition of one condition to allow
11 flexibility. Second the motion Ms. Cohen. Also in support
12 Vice Chairperson Heath and Mr. Hinkle and a Board seat vacant.
13 Motion carries 4-0, Mr. Chairman.

14 CHAIRMAN JORDAN: All right. Summary please.

15 SECRETARY MOY: Thank you.

16 CHAIRMAN JORDAN: Thank you.

17 MS. LAUDI: Thank you, very much.

18 CHAIRMAN JORDAN: All right. Let's keep chomping away.
19 18994.

20 SECRETARY MOY: All right to the table the applicants
21 in Case No. 18994. Please introduce yourselves.

22 MR. SULLIVAN: Good morning, Mr. Chairman and members
23 of the Board. My name is Marty Sullivan with the law firm of
24 Sullivan & Barros on behalf of the applicant.

25 MR. MEHDIZADEH: Good morning. My name is Ramin

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1 Mehdezadeh, I'm the owner, the applicant and architect.

2 CHAIRMAN JORDAN: I can't find the plans in the file.
3 I know we had a hearing on this before.

4 MR. SULLIVAN: I'm not sure that we submitted plans
5 because the building was all matter of right. I'd have to check
6 but I don't believe that we submitted plans because it was just
7 the parking. Everything in the building is matter of right
8 although I noticed in the DDOT report that they would like plans
9 showing the bike rack so we can submit--

10 CHAIRMAN JORDAN: Yes, but the file should have plans
11 in it. The file should have plans. Mr. Sullivan, would you
12 supplement the file with the plans? We need to have the plans
13 in the file.

14 MR. SULLIVAN: Sure.

15 CHAIRMAN JORDAN: And although you're not getting
16 relief for the building but the rules require the plans to be
17 there just in case. We went to the BZA, we got approval and
18 yeah but you didn't get approval for this building.

19 Okay. That being said I think we had the opposition
20 from neighbors and we're concerned about noise and the parking
21 availability. You subsequently went out and did a traffic
22 study, right and the traffic study is probably showing only
23 about a 56 percent use of the parking in the area. Is that
24 correct? Is that what it is?

25 MR. SULLIVAN: I believe it was 75 at peak.

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1 CHAIRMAN JORDAN: And how did they conduct their
2 traffic study? Did they go out and just count the empty
3 spaces or did they do the--how did they do that?

4 MR. SULLIVAN: They do it from a number of hours. Now
5 I'm looking for the-- I believe it's from 5 p.m. to midnight.
6 And they check it on the hour and the peak time was at 11 and
7 12, similar numbers.

8 And they counted an area that was suggested by DDOT that
9 is shown on their report, figure 2, that lists in colors the
10 streets that were studied.

11 CHAIRMAN JORDAN: Okay. And you proposed some TDM
12 measures and well TDM measures that was contained in that
13 traffic report. Although you talked about some other place
14 about the barring of the residential parking permit process,
15 would certainly be something that we would want, if we were
16 to grant this relief.

17 So did you subsequently have any other meetings with
18 those neighbors who were opposing?

19 MR. SULLIVAN: We did not. We had discussions with
20 them after the hearing. The main question was seeing if there's
21 any way to get access through the open lot to get to the back
22 of the property. But they use that lot for a garden and for
23 other things so they weren't interested in doing that.

24 CHAIRMAN JORDAN: Okay. Board, any questions on this
25 one? Ms. Cohen?

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1 COMMISSIONER COHEN: Was it just one neighbor that
2 objected is my recollection.

3 MR. SULLIVAN: There were two couples I believe.

4 COMMISSIONER COHEN: Both on other sides? Do you
5 recall the location?

6 MR. MEHDIZADEH: One in the north and one in the south
7 but a few houses away.

8 CHAIRMAN JORDAN: All right. Any other questions,
9 Board? Anything else you want to present other than what you
10 gave us in the supplemental?

11 MR. SULLIVAN: No, just to point out that we offered the
12 condominium document language and that we would include that
13 in disclosures which I think has the--

14 CHAIRMAN JORDAN: Are these rentals or condominiums?

15 MR. SULLIVAN: They'll be condominiums. So buyers
16 will see the disclosure about the RPP restriction and they will
17 know that these are being marketed to non-car owners.

18 CHAIRMAN JORDAN: We'll go over that when we get-- let's
19 go through the hearing and we'll come back to those things
20 because they need to be a bit stronger and we'll talk about
21 that.

22 So let's go to the Office of Planning. Is there anything
23 that we need to supplement in the Office of Planning?

24 MS. BROWN-ROBERTS: No, Mr. Chairman. The Office of
25 Planning supports the parking reduction.

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1 CHAIRMAN JORDAN: Board, questions planning?
2 Applicant questions planning?

3 MR. SULLIVAN: No thank you.

4 CHAIRMAN JORDAN: Department of Transportation?

5 MR. WESTROM: Good morning, Board. Ryan Westrom for
6 the District Department of Transportation. And we just wanted
7 to report back. This is obviously a case that's come back and
8 subsequent to the last hearing we did meet with the applicant
9 and they conducted an appropriate transportation
10 investigation. And it confirmed our prior position on the case
11 and we do not object due to the presence of available street
12 parking and furthermore, and specifically, the
13 Transportation Demand Management Strategies that they
14 suggest.

15 We would however note that we do want to see at least
16 two long-term bike spaces. That is requisite, since it is a
17 5-unit building I think it could be even appropriate to have
18 one space for each unit, that being five. And so we would like
19 to note that for consideration and conditions.

20 CHAIRMAN JORDAN: So bicycle rack?

21 MR. WESTROM: Yes. Long-term bicycle parking for the
22 residents. With that I would be happy to take any questions
23 from the applicant or the Board on this matter. Thank you.

24 CHAIRMAN JORDAN: Where are we in regards-- where's the
25 District in regards to the management of the restrictions on

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1 residential parking permits?

2 MR. WESTROM: Great question and obviously as you know
3 it's something that we're continuing to work through. I think
4 that we're just beginning to see some of these projects come
5 out of the pipeline that have had these restrictions. It is
6 not a condition that is strictly enforceable by the District,
7 by the Department of Transportation, but it is something that
8 we anticipate seeing and hearing more and learning about and
9 it's something that we continue to try and research ourselves
10 to understand how pragmatic and what effects these have on the
11 neighborhoods where these restrictions are put in place.

12 CHAIRMAN JORDAN: Yes, because we're doing them and
13 they're the ones that boil up and boil over, right.

14 All right. Any other questions of the Department of
15 Transportation anyone? Applicant?

16 MR. SULLIVAN: No. Thank you.

17 CHAIRMAN JORDAN: Now did you say four bicycle, space
18 for four bicycles or five?

19 MR. WESTROM: Well there are five units in the building.
20 I think that that's a natural stopping point. The requisite
21 level is at least two.

22 CHAIRMAN JORDAN: Okay. Got it.

23 COMMISSIONER COHEN: I presume you're willing to
24 provide that?

25 MR. SULLIVAN: Certainly.

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1 CHAIRMAN JORDAN: Anyone here from ANC-6B? ANC-6B?
2 We do have a letter supporting your request for relief from
3 ANC-6B. Anyone here wishing to speak in support? Anyone
4 wishing to speak in support? Anyone wishing to speak in
5 opposition? Anyone in opposition?

6 So let's turn back now to the applicant and go over some
7 of these conditions, the first of which would be that the
8 applicant shall record a covenant buying residential parking
9 permits correspondingly in the leases and condominium because
10 we don't know what's going to happen, the condominium documents
11 and non-amendable provisions in the bylaws of the condominium.

12 The covenant needs to be recorded with the Recorder of
13 Deeds Office so that we know that it runs with the land for
14 the property. Okay? So it's not just sufficient to have it
15 in the declaration of condominium, we actually want it to be
16 a non-amendable provision in the bylaws because as the HOA
17 comes in or the condo association comes in, they don't pop it
18 out.

19 Then the information and link to current transportation
20 programs and services must be provided to the new residents,
21 to include information on bike share, car share, etc., as
22 already submitted in your TDM. And you're going to provide
23 one year Capital Bikeshare membership per unit for the initial
24 sale of the property. And that you will install long-term
25 bicycle racks for at least five bikes. All right. Is ther

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1 anything else Board? Anyone?

2 MR. WESTROM: One minor note from DDOT in regards to
3 the Capital Bikeshare membership. They did note a willingness
4 to do that for the first five years not just the initial sale.

5 CHAIRMAN JORDAN: Good. Well, if they're condominiums,
6 so not for-- no, no, let's go back through that. They're
7 condominiums that would be five year membership. And if they're
8 apartments they would do it every new tenant for the first five
9 years. So it gets kind of hairy. So what was your wording?

10 MR. WESTROM: DDOT is content with the wording as
11 proposed from them that suggests that there's an annual
12 membership at the initial sale. However, if there's another
13 sale within the next five years, that they would come back and
14 provide that. And we'd be open to the applicant suggesting
15 a mechanism for that. Perhaps they could seed the Homeowners
16 Association.

17 CHAIRMAN JORDAN: I got. I got it. Also to be recorded
18 in the declaration and in the non-amendable provision of the
19 bylaws, that any unit that gets turned over, the condominium
20 association or whoever it is, has to provide a one-year bicycle
21 membership. That way we cover it.

22 All right. Is there anything else? Anyone? Then I
23 would move that we grant the relief requested in this case with
24 the conditions as set forth.

25 VICE CHAIR HEATH: Second.

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1 CHAIRMAN JORDAN: Any discussion? All those in favor,
2 aye? Those opposed, nay? The motion carries. Mr. Moy?

3 SECRETARY MOY: Staff would record the vote at 4-0.
4 This on the motion of Chairman Jordan to approve the
5 application for the relief requested as well as the conditions
6 as cited, the amended conditions. Second the motion Vice
7 Chair Heath, also in support Ms. Cohen, Mr. Hinkle. Board seat
8 vacant. Motion carries 4-0, Mr. Chairman.

9 CHAIRMAN JORDAN: Okay. Summary please and don't
10 forget and make a note that we need to have those plans filed,
11 Mr. Sullivan.

12 SECRETARY MOY: Plans filed before we issue you your
13 summary of the case.

14 CHAIRMAN JORDAN: All right. Thank you.

15 All right. We're at 18974.

16 SECRETARY MOY: This would be applicants to the table
17 for application No. 18974. This is the application of Jarek
18 Mika. This is a request for variance from the use provisions
19 under Section 330.5(e) at property 3209 13th Street, N.W.

20 CHAIRMAN JORDAN: Okay. Please introduce yourselves.

21 MR. BELLO: Good morning, Mr. Chair and Board Members.
22 Toye Bello on behalf of the applicant.

23 MR. DiRUGGIERO: Gerard DiRuggiero from Urban Land
24 Company providing real estate information.

25 MR. JONES: Patrick Jones, the architect.

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1 MR. MIKA: Jarek Mika the homowner.

2 CHAIRMAN JORDAN: I think first thing we've got clean
3 up. This was submitted as a use variance but I don't think
4 that's correct. Why is this a use variance?

5 MR. BELLO: Well, we actually amended our burden of
6 proof statement to submit it as an area variance.

7 CHAIRMAN JORDAN: Okay. All right. I was wondering
8 maybe I missed something. All right. Board, do you have any
9 issues or questions with this one? I think there's sufficient
10 information in the file to support it especially with it being
11 kind of de minimis relief. That's the real kicker here.
12 Seeing none, then we will proceed on.

13 Office of Planning, anything you want to add to your--

14 MR. GYOR: Good morning, Mr. Chairman and Members of the
15 Board. Stephen Gyor with the Office of Planning. I have
16 nothing additional to add to our report. Thank you.

17 CHAIRMAN JORDAN: Very good. Anyone here from DDOT on
18 this case? They have a letter of no objection to the
19 requested relief. ANC-1A, is it 1A, is that the right one?
20 ANC-1A.

21 MR. BELLO: Correct.

22 CHAIRMAN JORDAN: We have a letter of no objection.
23 Yes, no objection to the requested relief. Is there anyone here
24 wishing to speak in support? Anyone in support? Any one
25 in opposition? Anyone in opposition? Then we'll close the

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1 hearing. I would move we grant the relief in 18974.

2 COMMISSIONER COHEN: Second.

3 CHAIRMAN JORDAN: Motion made and second. All those
4 in favor, aye? Those opposed, nay?

5 [VOTE TAKEN]

6 Motion carries. Thank you. Mr. Moy?

7 SECRETARY MOY: Yes. Staff would record the vote as
8 4-0. This is on a motion of Chairman Jordan to approve the
9 request for special exception as amended. Seconding the
10 motion Ms. Cohen. Also in support Vice Chairperson Heath and
11 Mr. Hinkle. Board seat vacant. Motion carries.

12 CHAIRMAN JORDAN: Thank you. Summary.

13 SECRETARY MOY: Thank you.

14 MR. BELLO: Thank you.

15 CHAIRMAN JORDAN: All right, Mr. Moy, let's keep
16 going.

17 SECRETARY MOY: All right. I believe the next
18 application before the Board is 18995. This is the
19 application of Rokas Reipa, I believe I'm pronouncing it
20 correctly. Mr. Chairman, this was advertised special exception
21 under 223, not meeting lot occupancy, rear yard and side yard
22 setback and non-conforming structure requirements at property
23 1254 Florida Avenue, N.E.

24 Also I believe this was amended on May 11th to also add
25 special exception relief to court provisions under 406.1.

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1 CHAIRMAN JORDAN: Okay. Introduce yourself please.

2 MS. FOWLER: Jennifer Fowler, I'm the architect.

3 Mr. REIPA: And I'm Rokas Reipa. I'm the
4 homeowner/resident.

5 CHAIRMAN JORDAN: Okay. I think we remember this case.
6 Did you meet with that neighbor and still could not make any
7 agreements or anything?

8 MR. REIPA: Yes, so we met right after the last meeting
9 and we came to an agreement that I would replace his fence that
10 was blocking sunlight to his garden and I ended up replacing
11 the fence two weeks ago. I made it four feet lower. And that
12 was his only objection.

13 CHAIRMAN JORDAN: Okay. Anyone else? Any questions?

14 COMMISSIONER COHEN: I'm sorry, I wasn't probably here
15 for the first one but you lowered his fence?

16 MR. REIPA: There's a fence that separates my property
17 from his and it was a 10-foot tall fence that was blocking the
18 sunlight to his garden. So he came here to object to the fence,
19 not to my project itself. So we came to an agreement that I
20 would replace his fence and that's what I did.

21 COMMISSIONER COHEN: That's what I thought I heard.
22 Thank you.

23 MS. FOWLER: Did you meet with the ANC?

24 MR. REIPA: So I presented in front of ANC-5D last
25 Tuesday at their meeting and it was approved unanimously by

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1 the full 5D ANC.

2 COMMISSIONER COHEN: Could you urge them to give us the
3 letter please if we don't have it for the record.

4 MR. REIPA: Sure.

5 CHAIRMAN JORDAN: Anybody else? I think we're okay now
6 since this is our second time around. We had a full hearing
7 before when we had some issues come up and I think we've taken
8 care of that. Also the sun study stuff we have. So we'll
9 go -- unless Office of Planning, did you change anything in
10 your report?

11 MS. ELLIOTT: No, Mr. Chairman.

12 CHAIRMAN JORDAN: Very good. Thank you. We've
13 already gone around the block on this one so we just came back
14 to see where you're going to be. So we don't need to go back
15 all through that exercise. The Board doesn't have any other
16 issue and I think now we're ready -- let me go back. Is there
17 anyone here, additional support? Additional opposition?
18 We already did and really shouldn't call it again but I want
19 to make it sure nobody's here. Anyone in opposition? Okay.

20 COMMISSIONER COHEN: Mr. Chairman, I would just like to
21 state for the record that I have read the entire record because
22 I wasn't here for the first meeting.

23 CHAIRMAN JORDAN: Thank you. Appreciate it. You guys
24 work so hard. The Zoning Commission works hard. Trust me.
25 Anybody else anything? So we'll close the record.

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1 I would move we grant the relief, amended relief
2 requested in this case.

3 VICE CHAIR HEATH: Second.

4 CHAIRMAN JORDAN: Motion made and second. Discussion?
5 Again, we appreciate you reaching out to the neighbors. As
6 I said, before you come if you have the discussions and talk
7 and try to work with your neighbors things would go a lot
8 easier. So all those in favor of the motion, aye? Those
9 opposed, nay?

10 [VOTE TAKEN]

11 The motion carries. Mr. Moy?

12 SECRETARY MOY: Yes sir. Staff would record the vote
13 as 4-0. This on a motion of Chairman Jordan to approve the
14 amended relief. Seconding the motion Vice Chairperson Heath.
15 Also in support Ms. Cohen and Mr. Hinkle. Board seat vacant.
16 Motion carries, sir.

17 CHAIRMAN JORDAN: Summary order please.

18 SECRETARY MOY: Thank you.

19 CHAIRMAN JORDAN: We were just saying the first case we
20 had today just took the steam out of all of us and we're of
21 kind of sitting here like--

22 MR. REIPA: Thank you.

23 CHAIRMAN JORDAN: Okay. Let's do 18990.

24 SECRETARY MOY: Yes. To the table. This is application
25 No. 18990 of Diane Kurnit and Jonathan Brumer. As

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1 advertised, this is a special exception under 223 not meeting
2 lot occupancy at property 5330 42nd Street, N.W.

3 As you recall, Mr. Chairman, the Board last heard this
4 on May 12th and continued it to today's hearing. The Board still
5 needs to take testimony from Office of Planning, ANC and DDOT.

6 CHAIRMAN JORDAN: I thought we did that.

7 SECRETARY MOY: I'm not so sure unless I'm totally
8 wrong. And OP is checking we haven't gotten to her. There
9 is party status in opposition that was granted, Mr. Chairman.

10 CHAIRMAN JORDAN: How did we get to do all that and send
11 folks back out of here?

12 MR. BRUMER: Mr. Chairman, if I may. At the last
13 hearing what happened is we had at that point a resolution from
14 the ANC, a report from the OP, a complete record. Ms. Waldmann
15 was granted party status. We spent over an hour in the back
16 room having discussions and negotiations with her. Came back
17 to this room and before there was a decision, there was a fire
18 alarm.

19 CHAIRMAN JORDAN: Is that what it was?

20 MR. BRUMER: So it was held over for that reason until
21 today.

22 CHAIRMAN JORDAN: Ah-ha. Thank you. That's what it
23 was. The fire. We'd better hurry up huh. Now that's
24 right. I remember the old fire alarm. One second here. All
25 right. So has there been further conversation among the

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1 neighbors?

2 MR. BRUMER: Mr. Chairman, if I may again.

3 CHAIRMAN JORDAN: Introduce yourself for the record
4 please.

5 MR. BRUMER: Oh, I'm sorry. My name is Jonathan Brumer
6 and I'm one of the applicants.

7 MS. KURNIT: And I'm Diana Kurnit the other applicant.

8 CHAIRMAN JORDAN: Okay.

9 MS. WALDMANN: Jane Waldmann, opponent.

10 CHAIRMAN JORDAN: Okay. Great. Now proceed.

11 MR. BRUMER: Since the last hearing, after the last
12 hearing Ms. Waldmann emailed us and let us know that she could
13 make the second alternative work. That's the one with the--

14 CHAIRMAN JORDAN: The cutout.

15 MR. BRUMER: The triangular cutout. We spoke with our
16 contractor about the idea again and had some conversations and
17 then ended up emailing her back and explaining that-- I should
18 explain that in her email to us Ms. Waldmann asked whether we
19 would be willing to sign an agreement committing us to the
20 second alterative with the triangular cut-out and letting the
21 Board know that that was the only relief we'd be seeking.

22 And we ended up explaining to her after talking to our
23 contractor that as we had stated in our burden of proof
24 statement, our other filings, as we had stated at the ANC
25 hearing and we had stated last month when we were here at the

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1 BZA that our first preference remained to have a normal
2 rectangular shaped deck along the lines of our original
3 proposal of the first alternative proposal.

4 And if I could, I'd like to quickly explain the five
5 reasons why we prefer to have a normal rectangular shape deck
6 as opposed to triangular one.

7 First of all, for aesthetic reasons. We think that a deck
8 with a triangular cut-out would look odd. We haven't seen
9 such a cut-out in any of the additions of our neighbors,
10 including Ms. Waldmann's enclosed porch that doesn't have a
11 triangular cut-out.

12 Second. It would make the deck project more
13 complicated and more costly. We spoke with our contractor, he
14 told us that adding that triangular cut-out would require two
15 more footings, that there would need to be another post, a beam,
16 and beam connectors and his ballpark estimate is that it would
17 cost an additional \$850 dollars to have that triangular
18 cut-out.

19 Third, as we explained last month I think when we were
20 here and have explained in our papers, a proposed deck in a
21 rear yard that's small to begin with we have a very limited
22 amount of space to work with and the cut-out would make the
23 deck even smaller and less useable.

24 And, given how limited our space is, we really would like
25 to maximize our deck size as much as we can with a normal

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1 rectangular shaped deck.

2 And lastly, whether or not we have the triangular
3 cut-out, as we've tried to explain in our application materials
4 and at the BZA last month and at the ANC, we don't believe that
5 our proposed deck will unduly affect the air, light or privacy
6 of Ms. Waldmann that she enjoys, or in any way create deck that
7 would be out of step with what is the other additions in the
8 neighborhood.

9 So we want to continue to move forward and ask for the
10 original relief we requested for the rectangular sized deck
11 along the lines of our original proposal. Our first
12 alternative proposal, when we presented the alternatives to
13 the Board, we did so both because we were hoping to reach some
14 sort of an accommodation with Ms. Waldmann who had made it clear
15 she was going to oppose, and because, frankly, we were a little
16 bit concerned that she had a huge amount of leverage in this
17 process as the adjoining neighbor and might have something
18 close to veto power.

19 And we also were not sure what the Board would be
20 willing to approve and we would like to be able to rebuild some
21 sort of a deck. And if the Board was not comfortable with our
22 original proposal or our first alternative proposal, then we
23 were hoping to be able to build a deck along the lines of one
24 of the other alternatives. They're roughly in order of
25 preference.

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1 CHAIRMAN JORDAN: And I remember from our hearing
2 before the fire alarm because I think Mr. Turnbull was saying
3 why don't you build your deck out even further. I think Mr.
4 Turnbull made that indication. He thought your deck was very
5 modest and he made that comment to you. He thought you were
6 being very accommodating. I remember I was just reading over
7 my notes and I said Mike was on that case. Mr. Turnbull was
8 in the first part of the case.

9 COMMISSIONER COHEN: Yes, I'm channeling.

10 CHAIRMAN JORDAN: You're channeling him. Okay.

11 COMMISSIONER COHEN: And I did read the record.

12 CHAIRMAN JORDAN: Thank you. Sometimes these things
13 start blending in mind and it takes one or two little something
14 to pop it back in. Okay. Board, any questions of the
15 applicant.

16 BOARD MEMBER HINKLE: If I might, Mr. Chair, could you
17 just remind us why not construct it similar to what was there
18 before? I mean what are the--

19 MS. KURNIT: Sure. The original deck was only 7 feet out
20 and it really didn't feel very big and then also the other issue
21 is that the stairs were on the other side and that's the side
22 that actually has more green space. So we're trying to put
23 the stairs on the side that kind of in our minds don't matter
24 as much and really preserve that green space that we have
25 available to us.

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1 The deck was in bad shape. We have our inspection
2 report that we filed as one of our exhibits. It was sagging
3 and also there was no flashing so there was actually rotten
4 wood and damage to our house. They've already repaired that
5 but when we had the deck demolished we had wood repaired. It
6 was put together with nails and not screws and it was just
7 poorly constructed to begin with. It needed to come down. That
8 was part of the inspection report. We knew prior to even
9 purchasing the home we wanted to rebuild the deck.

10 MR. BRUMER: If I may the inspection report is one of the
11 exhibits we filed, excerpts from it, that describe all of the
12 problems with the deck and all the ways it wasn't up to code
13 and wasn't safe.

14 We've also filed photos of the old deck as well as all
15 of the rotten wood that became visible once the old deck was
16 removed.

17 MS. KURNIT: Also when the contractor-- so we were
18 trying to do a rebuild which is why we originally did a post
19 card permit and the contractor thought that he could reuse the
20 footings only to find out that they weren't put in properly.
21 I guess there weren't in concrete, they were just standing in
22 the ground and it was an unstable and unsafe deck.

23 MR. BRUMER: And one other thing that Diana didn't
24 mention that I just remembered is there is a retaining wall
25 on the southern side, on the right side of the driveway if

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1 you're in the back of the house facing the house. And we have
2 some concerns because we have two small children, we have a
3 toddler son and an infant daughter, about them playing near
4 that retaining wall or falling off it.

5 So for that reason we've wanted to not have that be an
6 area where they play and congregate so it's that reason as well
7 as the fact that the green space on the northern side of our
8 property, the side that is next to Ms. Waldmann's property,
9 is the side we wanted to preserve as much as possible and have
10 it be a safe play space for our kids and an area where we could
11 do a little gardening. So that's the reason we didn't want
12 to put stairs on that northern side but wanted to put them on
13 the southern side, whereas the original deck had them on the
14 northern side we wanted to put them on the southern side. That's
15 the reason for the change in the stairs as well as the need
16 for the rebuild.

17 CHAIRMAN JORDAN: Okay. Thank you.

18 MR. BRUMER: Thank you.

19 CHAIRMAN JORDAN: Are there any other questions?
20 Does the applicant have anything else you need to present to
21 the Board?

22 COMMISSIONER COHEN: One quick question for you, does the
23 proposed option 1 extend beyond your neighbor's porch?

24 MS. KURNIT: No.

25 MR. BRUMER: Are you referring to the alternative No.

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1 or to the original proposal because we had an original and three alternatives.

COMMISSIONER COHEN: If you could talk about the original and option 1.

MS. KURNIT: Okay. The original goes out 10 feet and that is in line, we specifically had it done in line with her porch that they would match up. And then the alternative one is actually six inches less. This also is to preserve this beautiful crepe myrtle tree that we don't want to get too close to so we actually want to give it some breathing room so we're not going to get right up to the tree.

CHAIRMAN JORDAN: So which one are you proposing?

MS. KURNIT: Well the original. It's 10 feet which lines up with--

CHAIRMAN JORDAN: That's what I thought you-- if it's helpful I can refer you to three exhibits in the record. Should I not? Okay.

MR. BRUMER: The only thing I was going to note is that we filed, in addition to filing the original deck proposal plans and a separate exhibit as the three alternative proposals, we also filed a copy of the plans and the permit application that Ms. Waldmann filed in July 1986. That allows you to see how deep her deck is for comparison with what we're proposing to build and you'll see if you look at that that it's 10-foot deep deck that she built.

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1 CHAIRMAN JORDAN: I realize you're probably one of the
2 guys that keep talking to yourself.

3 MR. BRUMER: I'm also.

4 CHAIRMAN JORDAN: Ms. Waldmann, do you have questions
5 you would like to ask of the applicant? You have the
6 opportunity to ask questions. You still have the opportunity
7 to do a presentation but this is just to ask questions.

8 MS. WALDMANN: My basic question is if you weren't going
9 to consider any of the alternatives, why did you submit them?

10 CHAIRMAN JORDAN: Good question.

11 MS. KURNIT: And I think that's a fair question. And
12 I think as Jon talked a little bit at the beginning, we did
13 just originally propose the one we wanted.

14 And then I had a conversation with you in our driveway
15 and you started talking about how I should be moving trees and
16 I should be doing this and that was going to cut off light.

17 MS. WALDMANN: And you should be Diana. You could.

18 CHAIRMAN JORDAN: Wait. Wait. Wait. We're not having
19 that kind of dialogue. You're going to answer the question then
20 if you have another question you're going to ask.

21 MS. KURNIT: So quickly to kind of answer that. So we
22 did have a lot of concerns that we wanted her to be accepting
23 of what our rebuild was going to be and so I immediately-- this
24 is all when we asked would she sign a letter of support. And
25 then she said at that time no, not under the current plan.

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1 So we did go to our contractor and we did say we're
2 fearful that we might not get this at all. What are some things
3 that we could do to address some of her concerns? And that's
4 when we presented those alternatives. It was for her and for
5 the Board because we thought we don't want to have nothing.
6 Right now we have nothing. You open your door and you plummet
7 to-- there is no deck, there's nothing.

8 So we really wanted something and we were just trying
9 to kind of figure out, we knew this process, how do we go about
10 this? And that was our solution.

11 MR. BRUMER: And in our burden of proof statement, as
12 well as our presentation to the ANC, we made it 100 percent
13 clear, if you look at our burden of proof statement, one of
14 the first things we filed, we say that explicitly that our first
15 preference is for the original plan. And then we laid out the
16 three alternatives and made it clear that we were presenting
17 them in order of preference. We've consistently said when we
18 were getting in this process, we haven't changed what we're
19 saying. Because--

20 CHAIRMAN JORDAN: Stop. Just stop. Your next
21 question?

22 MS. WALDMANN: No more. I have a statement.

23 CHAIRMAN JORDAN: Sure. No, no okay. So let's move on
24 to the other part of our process. Office of Planning?

25 MS. BROWN-ROBERTS: Yes. Good morning Mr. Chairman.

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1 The Office of Planning recommends approval and I just want to
2 note that we looked at the two options for the 10-foot and the
3 9-foot-6 decks and we came to the conclusion that either of
4 them would meet the requirements under section 223 and so we
5 recommend approval.

6 CHAIRMAN JORDAN: Okay. Any questions for Planning?

7 COMMISSIONER COHEN: No.

8 CHAIRMAN JORDAN: Applicant--

9 COMMISSIONER COHEN: I have a question. The crepe
10 myrtle tree you are saving, and I am a tree hugger but if that
11 came down, how would that affect the different options?

12 MS. KURNIT: It wouldn't.

13 COMMISSIONER COHEN: It wouldn't. Okay. So it doesn't
14 in any way by saving it impede the privacy, I mean by cutting
15 it down it does have nothing to do with--

16 MS. KURNIT: We wouldn't say we want an even bigger
17 deck. No. I mean if there were no tree there, that's all we
18 wanted anyway. We didn't want to go out past Ms. Waldmann's
19 deck. So being within the crepe myrtle accomplishes both
20 being in line with her deck and having enough room for that
21 tree to keep growing.

22 CHAIRMAN JORDAN: Has the applicant any questions of
23 Planning? Ms. Waldmann, any questions of planning? Office
24 of Planning? Anyone here from the Department of
25 Transportation on this case? We didn't get a letter from them

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1 I take it did we? I don't think so. Anyone here from
2 ANC-3E? ANC-3E? We do have a letter from ANC-3E who
3 supports your request for relief and supports you with the
4 deck.

5 Anyone here wishing to testify in support of the
6 application? Anyone in support? We will now turn to Ms.
7 Waldmann for her presentation please.

8 MS. WALDMANN: Thank you. Good morning. I'm Jane
9 Waldmann, I live at 5332 42nd Street, the property adjoining
10 that of the applicants. I have lived there for 30 years.

11 Let me be clear. I have never opposed the applicants'
12 desire to have a deck. I do strongly oppose the proximity of
13 the proposed deck to our shared property line. My opposition
14 focuses on my desire to maintain my privacy and the enjoyment
15 of my porch, to allow light into my basement and to maintain
16 the value of my property.

17 Section 223.2(b) states quote, "The privacy of use and
18 enjoyment of neighboring properties shall not be unduly
19 compromised." Unquote.

20 I believe they will be unduly compromised. My fence and
21 original deck, now a screened porch, were carefully designed
22 to permit light to pass through while preserving privacy. My
23 stairs on our joint property line are in their original
24 location and contribute to a buffering space between the two
25 properties.

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1 My stairs were mirrored by stairs, since demolished, on
2 the applicant's property. Applicant's option 4, which keeps
3 the stairs in their original location, is the only one that
4 maintains that original 8-foot distance between outdoor living
5 spaces. Option 4 allows the most light to my basement and
6 these together with the resulting symmetry and maintenance of
7 scale, will help to maintain my property's value.

8 The symmetrical design of our nearly 90-year-old houses
9 with approximately 8-feet-4 on each side of the property line
10 between original porches recognized the desirability of
11 distance to protect privacy.

12 The kitchen door landing leading to steps can continued
13 that separation of the two properties. Privacy screens are
14 not a substitute for space.

15 In their burden of proof statement the applicants
16 contend that without a deck they will have no recreational
17 outdoor space. They go on to say they assumed they would be
18 allowed to make repairs or construct a similar deck. And
19 when they learned they would have to replace rather than
20 repair, sought to maximize the space.

21 This then appears not to be a question of whether or not
22 they will be able to build a deck but whether or not they will
23 be able to build a significantly larger deck than was there
24 or is permitted without special exception.

25 The applicants have repeatedly referred to the size of

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1 my porch as the standard they should be allowed to equal.
2 Applicants' claim to the contrary, my porch and landing total
3 a maximum of 200 square feet, very slightly larger than
4 applicants' option 4 and considerably smaller than the other
5 three options.

6 I am aware that ANC-3E has passed a resolution
7 supporting the application. Parts of that resolution are
8 misleading and/or inaccurate. However, the ANC resolution
9 does not specifically endorse any of the four proposals
10 submitted. Its language does, however, imply support for
11 retaining the symmetry of the two houses, something achieved
12 only by option 4.

13 Applicants have cited the support of neighbors but
14 those neighbors are minimally, if at all, affected by their
15 proposal. Mine is the only property that will be unduly
16 compromised.

17 When the applicants first approached me about building
18 a deck I was supportive of the idea. It simply didn't occur
19 to me that they would plan something that eliminated their part
20 of the 90-year-old de facto buffer that stares on both sides
21 of our property lines provided. When alternative designs were
22 presented I agreed to option 4 only to be told it wasn't their
23 favorite.

24 I later learned that it was, as they have just said,
25 offered as a sort of fail-safe to ensure they could have a deck

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1 of some kind. And as they have said, I did finally agree not
2 to oppose option 2 and again they were not interested.

3 I find it curious that they present options only to later
4 remove them from consideration and that they seem unwilling
5 to consider alternate solutions to their desire for outdoor
6 space.

7 For instance, a number of people in the neighborhood
8 fence their backyards. Yes, they do give up their parking
9 spaces but there are choices made. And insist instead that
10 I should find a privacy screen the solution to my concerns.

11 The zoning regulations, as I understand it, are designed
12 to protect current and future property owners and to provide
13 a reliable framework for changes to land use. If a special
14 exception is granted in this instance it will set a precedent
15 that will make it harder to deny similar or future relief
16 requests.

17 I respectfully request that if you do opt to grant
18 special exception variance, that you recognize my concerns and
19 do so either for option 2 or option 4. Thank you.

20 CHAIRMAN JORDAN: All right. Board, any questions of
21 Ms. Waldmann?

22 Let me ask you, how much of your basement light is going
23 to be blocked by this?

24 MS. WALDMAN: Well, since the floor, if you will, will
25 extend 10 feet beyond the house, I'd say quite a lot. When

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1 there was a staircase there light could come through their
2 staircase and through mine to the basement.

3 CHAIRMAN JORDAN: You didn't have a landing on the
4 staircase, on the stairs? You just came straight up to the--

5 MS. WALDMANN: Their landing was let's say mine is
6 11-feet so let's say theirs was 11-feet. But if they go
7 beyond that another 8 or so feet, it's going to make a
8 difference.

9 CHAIRMAN JORDAN: And you have a screened porch?

10 MS. WALDMANN: I do.

11 CHAIRMAN JORDAN: And there's also a privacy fence
12 between the two? Is there a privacy fence between the
13 properties?

14 MS. WALDMANN: There's a fence, mine at the lower level.

15 CHAIRMAN JORDAN: It's a wooden fence?

16 MS. WALDMANN: Wooden fence. It's the lower level not
17 at the deck porches.

18 CHAIRMAN JORDAN: Okay And it comes like right
19 underneath your deck, right? No?

20 MS. WALDMANN: No.

21 CHAIRMAN JORDAN: Your porch?

22 MS. WALDMANN: There are some pictures attached to the
23 statement. Exhibit 19 I think.

24 CHAIRMAN JORDAN: So the fence is about what, 5 feet,
25 6 feet?

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1 MS. WALDMANN: Tall, yes.

2 CHAIRMAN JORDAN: And your deck sits up how high? How
3 high are you? Your porch?

4 MS. WALDMANN: I don't know how high it is off the
5 ground. I did provide some statements in there, there's
6 picture.

7 CHAIRMAN JORDAN: How big a space was the light coming
8 through?

9 MS. WALDMANN: The basement door has a glass--

10 CHAIRMAN JORDAN: How big a space, when their deck was
11 up and the old staircase was up, how big a space of open air
12 was there for light to come through?

13 MS. WALDMANN: It wasn't open air, it was an open
14 staircase.

15 CHAIRMAN JORDAN: Open staircase. All right. So how big
16 was that space that was open? How big was that that was open
17 that light could pass through?

18 MS. WALDMANN: Four feet on my side and four feet on
19 theirs.

20 CHAIRMAN JORDAN: No, that's not for the light to pass
21 through because the light had to pass through the openness of
22 the staircase. Is that correct?

23 MS. WALDMANN: That's correct. That's what this picture
24 is showing.

25 CHAIRMAN JORDAN: Which one are you looking at here?

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1 Where the garbage cans are?

2 MS. WALDMANN: No.

3 CHAIRMAN JORDAN: That's whose? That's your property or
4 your property?

5 MS. WALDMANN: That's my property.

6 CHAIRMAN JORDAN: But I still don't see how a whole
7 bunch of light was getting through there. That's my question.
8 I'm just trying to understand.

9 MS. WALDMANN: The reason a whole bunch of it which is
10 why I'd like to preserve what there is.

11 CHAIRMAN JORDAN: Got it. Okay. That helps my brain
12 because I'm like there wasn't much getting through there in
13 the first place. And doesn't your walk out of your stairway
14 over the top of your basement window, the basement window door?
15 Your deck stops light from coming down to the basement level.
16 Isn't that correct?

17 MS. WALDMANN: Yes it is.

18 CHAIRMAN JORDAN: Okay. Have you guys got a question?
19 Did you guys have-- Okay. Any other questions, Board? So if
20 you need more, well all right so your deck-- on that side what
21 is your deck going to-- what's the material? Is it open slats
22 or wood?

23 MS. KURNIT: It's a Trex composite deck. I'm sorry,
24 maybe I don't understand your question.

25 CHAIRMAN JORDAN: There's no gaps between? The sun

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1 can't pass through your aspect of the deck?

2 MS. KURNIT: Not on the flooring no. There would be a
3 railing.

4 CHAIRMAN JORDAN: I got that but going through the
5 railing?

6 MS. KURNIT: I think the railing is they're four inches.
7 It's not a solid rail. Several beams have to be--

8 CHAIRMAN JORDAN: There's spaces between the railing?

9 MS. KURNIT: Exactly. Exactly. And I think to kind
10 of help you settle this in your mind too, I think we'd honestly
11 really like to hear from Ms. Waldmann which she would prefer
12 if we were to do this. Would she prefer a type of privacy
13 screen to help with the privacy but we don't want to do that
14 if it's going to impede any sun that might come in. So either
15 way on that we would absolutely like to hear from her about
16 what she'd prefer and we'd be happy to do one or the other.

17 CHAIRMAN JORDAN: We're not going to hear from her here.
18 You two seem to think-- and the deck is not on the property
19 line, it's about a foot off or 8 inches or something--

20 MS. KURNIT: Ten and a half.

21 MR. BRUMER: Ten is what our contractor told us. Yes,
22 I think this is something we talked about in our--

23 CHAIRMAN JORDAN: Great. Thank you.

24 BOARD MEMBER HINKLE: I think it was a foot actually.

25 MR. BRUMER: Yes, slightly over ten inches from the

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1 property line on the left or on the northern side of the desk.

2 CHAIRMAN JORDAN: Well, Ms. Waldmann, anything else you
3 want to say? Board, any other questions of Ms. Waldmann?
4 The applicant in question, do you want to ask her any questions?
5 Now you have the opportunity to do that.

6 MS. KURNIT: We don't have any questions. If it helps
7 with the light I'm happy to share these with Ms. Waldmann too.
8 We did take some photos over the weekend to show we have no
9 deck right now. We have nothing. And we have her side and our
10 side.

11 CHAIRMAN JORDAN: What question are you asking her?

12 MS. KURNIT: Well, I guess the question would be would
13 you like to see this photo and does this help at all?

14 MS. WALDMANN: It does not. Thank you.

15 MS. KURNIT: Okay.

16 CHAIRMAN JORDAN: Are you about to ask a question? Are
17 you getting ready to ask a question? Try to speak.

18 MS. KURNIT: No, we have no questions.

19 CHAIRMAN JORDAN: All right. Okay. Is there anyone
20 wishing to speak in opposition? Any other opposition?
21 Okay. Can we close it? Is there any other information you
22 need? I don't think we need to have any rebuttal from the
23 applicants. All right. So let's close the hearing. Is the
24 Board ready to deliberate on this case? All right.

25 I would move that we grant the relief requested for in

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1 this case 18990. I believe that there's sufficient showing that
2 there is some restraint being offered by the applicant that
3 this is totally within their property. They're still away from
4 their property line. The minimal light and air effect that
5 would happen to the party in opposition is not substantial or
6 significant in any way. In fact, a lot of that occurred by
7 the party in opposition's own property and its own deck and
8 on fencing.

9 I believe that any privacy issue that would occur is
10 something-- I truly don't even see the word privacy issue. At
11 best there would be light that would have-- we tried to
12 ascertain how much light was coming through from the old
13 standard and it doesn't appear to be much. So I would move
14 that we grant the relief on 18990 plus this support of both
15 the Office of Planning and the ANC which we give great weight.
16 And at least 14 neighbors.

17 SECRETARY MOY: Excuse me, Mr. Chairman, before anyone
18 makes a second. Just for the staff's own edification the
19 amended relief, and so that we're clear on the staff side what
20 relief is being requested. Is it the special exception 223
21 not meeting the lot occupancy side yard and nonconforming
22 structure? I just want to be clear.

23 CHAIRMAN JORDAN: What are you confused with? What's
24 the other relief?

25 SECRETARY MOY: Well, my understanding is the Office of

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1 Planning had recommended relief from 2001.3 but I didn't hear
2 anything when that--

3 CHAIRMAN JORDAN: Well we put it in just to cover
4 posteriors we put that in.

5 SECRETARY MOY: All right. Sorry to interrupt.

6 CHAIRMAN JORDAN: Now you made me lost my thoughts.
7 You know we had a very trying day today.

8 COMMISSIONER COHEN: I was just going to clarify that
9 we are talking about relief based on the original?

10 CHAIRMAN JORDAN: Yes. Yes.

11 COMMISSIONER COHEN: All right. Then I will second.

12 CHAIRMAN JORDAN: Okay. Any other discussion anyone?
13 All those in favor of the motion, aye? Those opposed, nay.
14 And the motion carries. Mr. Moy?

15 SECRETARY MOY: Staff would record the vote as 4-0.
16 This on the motion of Chairman Jordan with relief as was just
17 cited. Second the motion Vice Chairperson Heath. Also in
18 support Ms. Cohen and Mr. Hinkle. We have a Board seat vacant.
19 The motion carries for approval 4-0.

20 MS. KURNIT: Thank you.

21 MR. BRUMER: Thank you very much.

22 SECRETARY MOY: Summary?

23 CHAIRMAN JORDAN: I guess, do we do a summary order on
24 this or not? I don't think we do.

25 SECRETARY MOY: There was a party in opposition, Mr.

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1 Chairman.

2 CHAIRMAN JORDAN: I know. I know but I'm just do I
3 gamble or not. That is the question. All right. Let's go
4 ahead and write it up. Sorry about that. We're going to have
5 to write it up.

6 Mr. Moy, you have business that comes before the Board?
7 By my calculation the Board has gone through all the cases that
8 were on the docket for today. All right. I think there was
9 another issue that someone had. We can talk about your issue
10 if you wish but let me hear what's going on. Please come
11 forward.

12 MS. EDWARDS: Honorable gentlemen and ladies, thank you
13 very much for allowing me to talk. My name is Lee Edwards or
14 Leona Edwards, 2905 P Street next to the people the Hezirs whose
15 case you approved of this morning. And I tried desperately
16 to get-- I talked with her yesterday and she didn't say how
17 are you getting there or do you approve? But I tried to get
18 here on time this morning and we just ran into difficulties.

19 But I'm asking please if there could be a continuation
20 or a continuum I think the term is, of time -- maybe a month -- so
21 I could talk with my Advisory Neighborhood Committee person.
22 I did indeed call Tom Burch who represents us and is elected,
23 and I thought the thing was going forward but I was rather
24 surprised to find it was not.

25 CHAIRMAN JORDAN: Well, a couple of things. That was

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1 on our expedited docket.

2 MS. EDWARDS: Excuse me?

3 CHAIRMAN JORDAN: A couple of things. It was on our
4 expedited docket this morning which we already took action.
5 And any opposition or concerns have to be filed in advance of
6 the hearing. And I know you probably didn't know that. And
7 the other thing, we do have a letter from the ANC which supports
8 the-- the ANC has already discussed this and submitted a
9 letter in support or no objection to the relief.

10 MS. EDWARDS: They submitted an objection?

11 CHAIRMAN JORDAN: No objection.

12 MS. EDWARDS: No objection?

13 CHAIRMAN JORDAN: Yes. They said they had no objection.

14 MS. EDWARDS: Well, my English basement dining room is
15 the only one affected. The people across the street, down the
16 street are not affected. And I would just hope in view of my
17 particular heart condition that I'd be given a month maybe.

18 CHAIRMAN JORDAN: The problem is procedurally under the
19 rules we're handcuffed at this point.

20 MS. EDWARDS: You're handcuffed?

21 CHAIRMAN JORDAN: Yes, at this point the rules will
22 not allow us to do anything different. I understand you had
23 some difficulties getting here but we already moved forward
24 and did some things. So it's after the fact, I guess that's
25 what I'm saying.

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1 MS. EDWARD: Is there any recommendation you have for
2 me, any little piece of hope? Because we love the house and
3 my husband died. He was a lawyer and we bought it 42 years ago
4 and I had been talking with people about the possibility of
5 cooperating and bringing light on both sides.

6 CHAIRMAN JORDAN: And have you tried to talk to your
7 neighbors?

8 MS. EDWARDS: I did. Well they live in Virginia and so
9 I didn't see her until yesterday. And yesterday we spoke
10 basically pleasantries but she didn't ask me how I was getting
11 here today. And the people who gave me transportation just
12 did not allow enough time. I'm sorry.

13 CHAIRMAN JORDAN: I understand. I don't know how we
14 can resolve it. I really don't.

15 MS. EDWARDS: I think there are really ways to resolve
16 it. My husband had hired an architect and he pointed out that
17 a circular staircase could be put down there and give plenty
18 of light on both sides. So I'm not without hope that
19 something can be done.

20 CHAIRMAN JORDAN: I don't know where to send you for
21 help.

22 BOARD MEMBER HINKLE: Mr. Chair, the one thing I might
23 suggest is just because they got approval today doesn't mean
24 that they necessarily have to build it. So you might want to
25 continue to have conversations with them and maybe they could

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1 modify their plans if you have some different ideas that
2 actually might help you out a little bit. I mean that might
3 be one approach.

4 But they did get approval today for what we saw.

5 MS. EDWARDS: And again I really thank you very much
6 because I would like to believe that hope spring eternal. And
7 I am getting my heart condition under control.

8 BOARD MEMBER HINKLE: Well, I would suggest you just
9 keep speaking with them and maybe you do come up with a
10 different approach to what they want to do.

11 MS. EDWARDS: Okay. I shall do that. And thank you.

12 CHAIRMAN JORDAN: Very good. Thank you.

13 BOARD MEMBER HINKLE: Thank you.

14 CHAIRMAN JORDAN: With that we will be adjourned.

15 (Whereupon, the proceedings in the Meeting/Hearing of
16 the Board of Zoning Appeals having been concluded, went off
17 the record at 12:28 p.m.)

18

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